

Second 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 Second 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 June 30, 2011.¹

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 VIPD-led training programs. One training program held in the St. Croix District focused on the use of intermediate force devices (specifically, TASER and O.C. Spray) in light of the Department’s issuance of both the Electronic Control Weapon (“ECW”) Policy and O.C. Spray Policy on March 30. The other training program focused on retraining Officers and Supervisors in the St. Thomas, St. John, and Water Island District (the “St. Thomas District”) on the complaint process directive, which the VIPD issued in October 2010, and the Use of Force Policy and Reportable Use of Force Policy, both of which the VIPD issued on March 30. The VIPD conducted this retraining after the OIM provided it with critical feedback about the original training, which took place during the First Quarter.²

During the Second Quarter, OIM representatives also continued their practice of meeting with VIPD personnel in the St. Thomas and St. Croix Districts to monitor the VIPD’s on-going efforts to comply with the Consent Decree,³ and to provide technical assistance as needed. For example, during each monitoring trip, OIM representatives met (or made every effort to meet) the Chiefs, Deputy Chief, and Training Director

¹ This Report references a limited number of events that occurred after June 30 to provide context and shed light on significant efforts that the VIPD made outside of the quarter to satisfy its Consent Decree obligations.

² OIM First Quarterly Report of 2011 at 21.

³ 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.

II | William F. Johnson and Steven M. Witzel

charged with overseeing the Consent Decree working groups—Use of Force (Chief of the St. Croix District), Citizen Complaint Process (Chief of the St. Thomas District), Management & Supervision (Deputy Chief of St. Thomas), and Training (Training Director)—which were formed at the Consent Decree Summit in January. We also spent a considerable amount of time meeting with members of the Consent Decree working groups and other VIPD personnel about the Consent Decree compliance process, including the Director and Assistant Director of the Internal Affairs Bureau (“IAB”), 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. The OIM reviewed that documentation to track and analyze the extent to which the Department is adequately investigating use of force events.

As the OIM previously reported, the Police Commissioner first announced his intent to retire from the VIPD in December 2010.⁴ After a distinguished career, the Police Commissioner ultimately retired from the VIPD on August 15. The OIM appreciates the Police Commissioner’s long-standing dedication to the Consent Decree. Among other things, the Police Commissioner helped promote a tone of compliance, and created the Consent Decree working groups (discussed in detail below), which should have a lasting, positive impact on the Department’s Consent Decree compliance process.

The OIM understands that a search for a new Police Commissioner is underway, and that the Governor appointed the Assistant Police Commissioner as the Acting Police Commissioner on an interim basis. The OIM anticipates that the Acting Police Commissioner will move ahead on all current and future efforts to satisfy compliance with the Consent Decree; he should not simply wait for a new Police Commissioner to be appointed to lead those efforts. We sincerely hope

⁴ OIM Fourth Quarterly Report of 2010 at VIII.

that a new Police Commissioner is appointed as soon as possible to provide leadership for the VIPD's critical efforts to comply with the Consent Decree.

The OIM's First Quarterly Report of 2011 was quite critical of the VIPD's slow rate of progress and specifically called on the VIPD's executive leadership team (Police Commissioner, Assistant Police Commissioner, Chiefs, Deputy Chiefs, and Training Director) to recommit themselves (and thereby the Department) to complying with the Consent Decree.⁵ While we commend the Chief of the St. Croix District and the Training Director for taking a more active role in the Consent Decree compliance process, the rest of the executive leadership team also needs to increase their progress.

For example, with respect to the Consent Decree working groups, the Chief and Deputy Chief of the St. Thomas District need to become more actively involved in the work of their respective Complaint Process and Management & Supervision working groups. While we encouraged the working group leaders to delegate discrete tasks to "point persons"—which, after some delay, they did—they should not abdicate their responsibilities to those individuals. Among other things, working group leaders must continually reevaluate and communicate their working groups' objectives, regularly attend working group meetings, review key policies relating to their areas of responsibility, and interact with other working groups and VIPD personnel, particularly regarding training, as necessary. As we have repeatedly stated, the OIM will hold the working group leaders (Chiefs, Deputy Chief, and Training Director) accountable for the leadership, and the success or failure of their respective working groups. The Acting Police Commissioner (who, unlike the OIM, has the power to direct and control the working group leaders) must also hold the working groups accountable.

Moreover, the Acting Police Commissioner should help the working group leaders overcome any roadblocks (either internal or external) that

⁵ OIM First Quarterly Report of 2011 at VII and 2.

IV | **William F. Johnson and Steven M. Witzel**

they encounter. Unfortunately, we are aware of instances where the Police Commissioner and Assistant Police Commissioner could have easily resolved such roadblocks, but did not. For example, during the Second Quarter, the Chief of the St. Thomas District declined to disseminate certain force-related materials prepared by the Use of Force working group because they had not been approved by the Police Commissioner, which is apparently the ordinary procedure. While the Police Commissioner (or the Assistant Police Commissioner, as his designee) could have quickly resolved this situation by clarifying the required procedure, they inexplicably allowed it to go unresolved. As a result, those materials still have not been disseminated in the St. Thomas District, at least as far as the OIM is aware.

We are also concerned that the VIPD appears to be holding back and/or vetting Consent Decree related materials—including minutes from working group meetings—before providing them to the OIM. Under the Consent Decree, we are entitled to access any non-privileged “VIPD documents . . . that the Monitor reasonably deems necessary to carry out the duties assigned to the Monitor”⁶ As such, going forward, we expect the Department to provide any requested materials promptly.

Still, the OIM commends the Compliance Coordinator for his substantial efforts during the Second Quarter. The Compliance Coordinator has been steadily improving the quality and timeliness of the Department’s quarterly Status Reports over the past two quarters. In addition, the Compliance Coordinator has taken an active role in nearly every aspect of the Consent Decree compliance process.

Use of Force Policy Development

During the Second Quarter, the VIPD issued two additional force-related policies, the Canine Policy and Firearms Policy. Thus, through the end of the Second Quarter, the VIPD issued a total of ten new force-

⁶ Consent Decree (“CD”) ¶ 91.

related policies, pursuant to the Consent Decree.⁷ We commend the Department, and in particular the Policies and Procedures Committee (the “Committee”), for this significant and transformative accomplishment.

Nevertheless, additional work remains to be done. For example, the VIPD is developing an Investigation and Review of Use of Force Policy, which will permit the VIPD to investigate use of force events in proportion to the type of force used; currently, all types of force must be investigated using a “one size fits all” approach. Under this policy, more serious types of force, like firearms discharges, would be subject to more exhaustive investigative requirements than comparatively less serious types of force, like non-compliant handcuffing. Such a policy would allow VIPD personnel to focus their efforts more efficiently. The Department is also developing a policy to guide its Field Training Officer (“FTO”) Program. As discussed below, the FTO Program is a critical component of training new Officers. In addition to finalizing the policies referenced above, the Department should identify any additional force-related policies that the VIPD needs. For example, we understand that the Department is considering developing a Special Operations Team Policy and Sniper Policy.

The OIM expects the Department to be able to substantially comply with the Consent Decree’s policy development provisions within the next two quarters. However, to do so, it must continue to move “full speed ahead.” Once the Department finalizes all of its force-related policies, it must work to fully implement them.

⁷ As discussed in depth in the last quarterly report, the VIPD issued the following 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 issued the RRR for VIPD personnel to document use of force events pursuant to the Reportable Use of Force Policy. OIM First Quarterly Report of 2011 at 5.

Evaluation, Documentation, and Review of Uses of Force

To evaluate whether Commanders are adequately investigating use of force events, the Use of Force working group audited use of force files from Zones in both Districts during the Second Quarter. We commend the Use of Force working group for proactively taking this step; such audits can help the Department identify issues before they become more significant.

Unfortunately, based on that audit, the Use of Force working group found material differences between the quality of use of force investigations across the Districts. While the Use of Force working group reported that Commanders in the St. Croix District were completing use of force investigations that complied with the Consent Decree's requirements, it also reported that Commanders in the St. Thomas District generally were not. This difference in quality highlights the need for better communication and cooperation across the Districts.

Although the OIM has not yet independently confirmed the Use of Force working group's findings, our review of investigations conducted in the Zones this quarter similarly revealed deficiencies. Specifically, the OIM's review demonstrated, among other things, that Officers do not always notify Supervisors of force incidents and, when they do, Supervisors do not always respond, interview all involved VIPD personnel and witnesses, or preserve evidence. In contrast, the OIM observed a marked improvement in the quality of use of force investigations conducted by IAB in both Districts. Overall, IAB's investigation files were well-organized and contained all of the documentation required by the Consent Decree.

The Use of Force working group also recently developed a "checklist" to help Supervisors conduct use of force investigations. The checklist, which sets forth investigative tasks that must be documented as part of a use of force investigation, should further improve the quality and uniformity of the Department's investigations. The Department should disseminate the checklist to Supervisors in both Districts and provide related training without delay. In addition, the Use of Force working group disseminated an Arrest Directive in the St. Croix District

during the Second Quarter which: 1) delineates the differences between an investigative detention and an arrest; 2) outlines the procedure that VIPD personnel must follow if they arrest an individual, but later determine that they do not have an adequate basis for the arrest; and, 3) re-emphasizes the need for VIPD personnel to complete an RRR (in addition to a Form 1-A or arrest report) whenever force is used. The Chief of the St. Thomas District should disseminate a similar directive in his District.

Finally, the OIM is concerned about the lack of Supervisors in both Districts, which almost certainly impacts the VIPD's ability to conduct adequate use of force investigations. In fact, we recently learned that a significant number of Supervisors who have played important roles in the Department's Consent Decree compliance process intend to retire during the next quarter. As such, the Department should immediately start the process of replenishing and bolstering its supervisory ranks. Without doing so, the VIPD's ability to comply with the Consent Decree will become more difficult.

Public Information & Means of Filing and Tracking Complaints

Despite finalizing the Acceptance of Citizen Complaints Policy and the Investigating Misconduct & Citizen Complaints Policy—which concern the intake and investigation of complaints (both citizen and command), respectively—during the Second Quarter, the VIPD did not issue either policy until the Third Quarter on August 2. As such, during the Second Quarter, the Processing Citizen Complaints Directive (#014-2010) (the “Directive”) continued to guide Officers and Supervisors on how to accept and investigate complaints.

As referenced above, the Training Division retrained Officers and Supervisors in the St. Thomas District about their respective obligations under the Directive in mid-June. During the Third Quarter, the Complaint Process working group must work with the Training Division to hold training programs in both Districts on the recently issued Citizen Complaints Policy and Investigation Misconduct & Citizen Complaints Policy. Because the Department implemented a public awareness campaign to promote the citizen complaint process in October 2010, the

VIII | **William F. Johnson and Steven M. Witzel**

Department must provide training on these policies as soon as possible so that Officers meet expectations created by the public awareness campaign when they respond to inquiries. In addition, the Department must provide all Officers and Supervisors with training on the preponderance of the evidence standard and evaluating witness credibility without further delay.

Under the Directive, all VIPD vehicles (whether marked or unmarked) are required to carry certain complaint process materials. In order to confirm compliance with that requirement, the OIM conducted an inspection of VIPD vehicles for those materials following in-service training on the citizen complaint process and use of force reporting. Of the nine vehicles inspected, six had the required materials. During the Second Quarter, the Complaint Process working group conducted a similar inspection. As discussed in greater detail below, according to the Complaint Process working group, all units that they inspected were in compliance. We commend the Complaint Process working group for its initiative, but recommend that it go further to ensure that the complaint process is functioning properly. For example, the Complaint Process working group should examine: 1) whether VIPD personnel are knowledgeable about the complaint process; 2) whether VIPD personnel respond properly to inquiries on how to lodge a complaint about police service; 3) whether completed complaint forms are being logged and investigated as required by the Directive; and, 4) whether complainants are being kept apprised of the status of their complaints.

Finally, in response to feedback from VIPD personnel and the OIM, the Department revised its complaint forms, brochures, and posters during the Second Quarter.

Risk Management

After a lengthy and frustrating delay, the VIPD reports that IAPro is now functional at the IAB in both Districts. IAPro is the Department's new Risk Management System ("RMS"). Among other things, the Department will use IAPro to identify potentially problematic behavior from VIPD personnel at an early (and hopefully remediable) stage. During the Second Quarter, VIPD personnel began working with a vendor

to install the Blue Team component of IAPro on Supervisors' computers in both Districts.⁸ Among other things, Blue Team will eventually allow VIPD personnel to enter force-related reports directly into IAPro from the field. The OIM commends the Director of IAB for leading the charge on IAPro and Blue Team. We also acknowledge the efforts of the Acting Director of Management and Information Services, who played a key role in resolving long-standing technical issues.

The Management & Supervision working group focused much of its attention during the Second Quarter on the Department's Data Input Plan, which the DOJ approved on March 22. As previously discussed, the Data Input Plan identifies information about VIPD personnel (including, but not limited to, uses of force, disciplinary issues, motor vehicle accidents, and sick days) that the Department will enter into IAPro to facilitate its risk management function. The Management & Supervision working group contacted the individuals (some of whom work outside the Department) who are ordinarily responsible for maintaining that information and worked to develop an efficient process to enter that information into IAPro. The OIM is hopeful that the Management & Supervision working group will resolve any remaining challenges to collecting and identifying information during the next quarter. The Department also reports that the Training Division is currently developing a training program relating to the Data Input Plan.

Another missing piece in the RMS is the Department's RMS Protocol, which sets forth various thresholds for supervisory review. For example, if an Officer receives more than X number of complaints within Y period of time, IAPro will alert the Officer's Supervisor to this potential issue; X and Y will be set forth in the RMS Protocol based on Department norms and generally accepted police practices. The DOJ provided the Department with comments on a draft version of the RMS Protocol on

⁸ At the end of this quarter, we learned that Officers and Supervisors could not access Blue Team from many locations in both Districts. The OIM will report on this issue in the next quarter.

X | **William F. Johnson and Steven M. Witzel**

June 14. As such, we expect the Department to finalize the RMS Protocol in the upcoming quarter.

Training

We commend the Training Division for its recent uptick in activity, and significantly improving the quality of its record keeping. During the Second Quarter, the Training Division held training programs focused on the ECW Policy (which includes, among other tools, the TASER) and the O.C. Spray Policy. The Training Division also conducted eight hours of in-service FTO instruction in both Districts. Finally, as noted above, the Training Division also retrained VIPD personnel in the St. Thomas District on the Citizen Complaints Directive, Use of Force Policy, Reportable Use of Force Policy, and the RRR this quarter.

Representatives from the OIM observed the Training Division's instruction on the ECW Policy and O.C. Spray Policy and were disappointed. Although the Training Division adequately explained the mechanics of operating each tool, it failed to provide sufficient guidance about the scenarios in which such tools should or should not be used. In addition, while the instructors explained that RRRs must be completed every time those tools are deployed, they did not adequately explain how to do so. The Training Division could have avoided these deficiencies by more thoroughly vetting these training programs, and it should strive to do so for *all* training programs in the future.

The Training Division has done a good job over the past two quarters keeping the OIM up to date about upcoming training programs. To that end, the Training Division recently disseminated a training schedule through September. Notably, that schedule does not include training programs relating to a number of recently issued policies, including the Vehicle Pursuit Policy, Canine Policy, and Firearms Policy. The Training Division must provide training for each of those force-related policies as soon as possible. As we have repeatedly stressed, the Training Division should start the process of developing training programs for policies well before the Department issues them. To

facilitate that process, the Training Division should be in regular contact with the Committee and each working group.

According to the Training Division's schedule, a number of important training programs (including programs relating to the Department's FTO program) are listed as tentative and/or "awaiting contract finalization." The VIPD should seek to finalize these programs as soon as possible. Based on our discussions with VIPD personnel, we understand that the Department has had difficulty securing final approval for several contracts from the Virgin Islands Department of Property and Procurement ("Property and Procurement"). While we understand the importance of following procurement procedures, we cannot overstate the importance of these training programs. We hope that the VIPD and Property and Procurement can quickly move past the current gridlock. In order to facilitate that process, we implore the Acting Police Commissioner (and, if need be, the Attorney General or Governor's Office) to take a more active role in helping to shepherd any outstanding contracts through Property and Procurement.

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 provisions and remain in compliance for two years.⁹ The Consent Decree Timetable, which was jointly filed with the United States District Court for the Virgin Islands by the VIPD and the U.S. Department of Justice ("DOJ") in November 2010, sets forth dates by which the VIPD must substantially comply with each Consent Decree provision. For example, under the Consent Decree Timetable, the VIPD should have substantially complied with ¶¶ 32-58, 70, and 72 by May 31 and ¶¶ 60, 61, and 73-81 by June 30. As explained below, with very few exceptions, the VIPD has failed to satisfy its obligations under the Consent Decree Timetable.

⁹ CD ¶ 103.

XII | **William F. Johnson and Steven M. Witzel**

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

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

As mentioned above, although the VIPD has already issued ten force-related policies, it has not yet fully implemented them as required by the Consent Decree.¹⁰ In addition, we understand that the Department is still contemplating several additional force-related policies.¹¹ As such, the Department has not yet complied with ¶¶ 31-41, which require the VIPD to review, revise, and implement *all* of its force-related policies.

Similarly, while the VIPD's citizen complaint process is well underway, the Department must, among other things, train Department personnel on the recently issued Acceptance of Citizen Complaints Policy and the Investigating Misconduct & Citizen Complaints Policy. The

¹⁰ As defined in the Consent Decree, "implement" refers to the "development or putting into place of a policy or procedure, including the appropriate training of personnel." CD ¶ 30.

¹¹ While the VIPD may develop additional force-related policies in the future (beyond those that are currently under development or required by the Consent Decree), those policies will not restart the two year substantial compliance period.

Department must also demonstrate that the complaint process is functioning properly in order to substantially comply with ¶¶ 42-58.¹²

Conclusion

While we noted some improvement during the Second Quarter, the Department is still very far from satisfying its obligations under the Consent Decree. Moreover, the Department is plainly in danger of not being able to reach and maintain substantial compliance for the two years required before the Consent Decree expires on March 23, 2014. While the Chief of the St. Croix District and the Training Director (among others)¹³ demonstrated an increased sense of commitment to the Consent Decree compliance process this quarter, we are still waiting for the entire Department's executive leadership team to work cohesively and diligently toward the Consent Decree's goals. In particular, we would like to see the Acting Police Commissioner take a visible and direct role in holding the working group leaders (and the rest of the Department) accountable for coming into compliance with the Consent Decree. In addition, while the Department has put (or is beginning to put) a number of important building blocks into place—including, but not limited to, issuing ten force-related policies and beginning to train on several of them, bringing IAPro into operation in both Districts, and implementing aspects of the citizen complaint process—the VIPD must put all of those pieces together in a more coordinated manner to move closer to substantial compliance. To that end, the working groups should work together more closely. For example, the Training and Use of Force working groups must develop training programs relating to each of the Department's revised force-related policies.

¹² The OIM will evaluate the impact of the Department's issuance of the Acceptance of Citizen Complaints Policy and the Investigating Misconduct & Citizen Complaints Policy (which occurred on August 2) on substantial compliance in the Third Quarterly Report of 2011.

¹³ For example, the Director and Assistant Director of IAB, the Compliance Coordinator, and the Training Cadre for St. Croix have long shown a commitment to compliance with the Consent Decree.

XIV | **William F. Johnson and Steven M. Witzel**

During this Quarter, the OIM was disappointed to learn that important materials (including draft policies and directives) from the Use of Force working group were not disseminated in the St. Thomas District because of procedural obstacles. Although the Police Commissioner (or the Assistant Police Commissioner, as his designee) could have quickly resolved the situation, they did not act promptly. As a result, the St. Thomas District lacks these materials, which is particularly unfortunate since the Use of Force working group found that the St. Thomas District lags behind the St. Croix District in conducting adequate use of force investigations. The Acting Police Commissioner must eliminate any obstacles that thwart cooperation and communication between the Districts. As we have repeatedly stated, the VIPD—despite being administratively and geographically divided into two Districts—is a single police agency, and it must function as such to satisfy the Consent Decree.

Although we are disappointed to see the Police Commissioner retire, the OIM looks forward to working closely with the Acting Police Commissioner and eventually the new Police Commissioner. In the interim, however, we trust that the Acting Police Commissioner will fully commit himself to the Consent Decree compliance process. Among other things, the Acting Police Commissioner should immediately address: 1) any obstacles that are preventing the working groups (particularly the Use of Force working group) from disseminating Consent Decree-related materials Department-wide; and 2) the current impasse between Property and Procurement and the VIPD relating to several vital training programs.

This is a critical time for the VIPD. Unless the Department rapidly increases its Consent Decree compliance efforts, it is very unlikely that the Department will be able to substantially comply with the Consent Decree within the required five-year time period. Unless extended, the Consent Decree expires on March 23, 2014, which means that the VIPD must achieve substantial compliance by March 23, 2012. Although time is quickly running out, there are still opportunities for the Department to get back on track and satisfy its obligations under the Consent Decree.

Office of the Independent Monitor | XV**Deadlines for Substantial Compliance Under the Consent Decree**

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

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

CD	Description	Deadlines for Substantial Compliance Under the Consent Decree	Satisfied/Not Satisfied
31	Use of Force Policies: Use of Force; Vehicle Pursuit; Spike Strip; Canine; SORT/SWAT; Sniper; FTO; Investigation and Review of Use of Force	within 30 days of DOJ final written approval	Not Satisfied – While the VIPD issued the Use of Force Policy, Vehicle Pursuit Policy, and Spike Strip Policy on March 30, 2011, as well as the Canine Policy on May 3, 2011, it has not implemented these policies. ¹⁴ In addition, the VIPD has not yet issued the SORT/SWAT; Sniper; FTO; Investigation and Review of Use of Force policies.

¹⁴ As defined in the Consent Decree, “implement” refers to the “development or putting into place of a policy or procedure, including the appropriate training of personnel.” CD ¶ 30.

XVI | William F. Johnson and Steven M. Witzel

CD	Description	Deadlines for Substantial Compliance Under the Consent Decree	Satisfied/Not Satisfied
32-38	Evaluation, Documentation, & Review of Use of Force Reportable Use of Force Policy	May 31, 2011	Not Satisfied – While the VIPD issued the Reportable Use of Force Policy on March 30, 2011, it has not implemented the policy. In addition, the VIPD has not satisfied the Consent Decree requirement that it evaluate, document, and review <i>all</i> uses of force.
39	Evaluation, Documentation, & Review of Use of Force Firearms Policy	May 31, 2011	Not Satisfied – While the VIPD issued the Firearms Policy on May 3, 2011, it has not implemented the policy.
40	Evaluation, Documentation, & Review of Use of Force Off-Duty Official Action	May 31, 2011	Not Satisfied – While the VIPD issued the Off-Duty Official Action Policy on March 30, 2011, it has not implemented the policy.
41	Evaluation, Documentation, & Review of Use of Force Intermediate Force Device(s)	May 31, 2011	Not Satisfied
42-45	Citizen Complaint Process Public Information & Means of Filing and Tracking Complaints	May 31, 2011	Not Satisfied

Office of the Independent Monitor | XVII

CD	Description	Deadlines for Substantial Compliance Under the Consent Decree	Satisfied/Not Satisfied
46-58	Citizen Complaint Process Investigation of Complaints	May 31, 2011, except September 15 for ¶ 49	Not Satisfied
59-68	Management and Supervision Risk Management System	September 15, 2011, except June 30, 2011 for ¶¶ 60-61 & May 31, 2011 for ¶ 62	Not Satisfied
69	Management and Supervision Oversight	September 15, 2011	Not Satisfied
70-72	Management and Supervision Discipline	May 31, 2011	Not Satisfied
73-77	Training Management Oversight	June 30, 2011	Not Satisfied
78-81	Training Curriculum	June 30, 2011	Not Satisfied

Office of the Independent Monitor**Table of Contents**

	Page
Introduction.....	1
Compliance Assessment.....	5
I. Use of Force Policies (CD ¶ 31) & Specific Use of Force Policies (CD ¶¶ 39-41).....	5
A. Status and Assessment	5
B. Recommendations	7
II. Evaluation, Documentation, and Review of Uses of Force (CD ¶¶ 32-38).....	8
A. Status and Assessment	8
1. Policies and Directives	8
2. Survey of Use of Force Incidents	10
3. Supervisor Review of Uses of Force.....	13
B. Recommendations	15
III. Citizen Complaint Process (CD ¶¶ 42-58)	16
A. Public Information (CD ¶¶ 42-43) & Means of Filing and Tracking Complaints (CD ¶¶ 44-45)	16
1. Status and Assessment.....	16
2. Recommendations.....	20
B. Investigation of Complaints (CD ¶¶ 46-58).....	20
1. Status and Assessment.....	20
2. Recommendations.....	22
IV. Management & Supervision (CD ¶¶ 59-72).....	22
A. Risk Management System (CD ¶¶ 59-68)	22

William F. Johnson and Steven M. Witzel

	Page
1. Status and Assessment	22
2. Recommendations	25
B. Oversight (CD ¶ 69)	26
1. Status, Assessment, and Recommendations	26
C. Discipline (CD ¶¶ 70-72)	26
1. Status, Assessment, and Recommendations	26
V. Training (CD ¶¶ 73-81)	27
A. Management Oversight (CD ¶¶ 73-77) and Curriculum (CD ¶¶ 78-81)	27
1. Status and Assessment	27
2. Recommendations	31
VI. Monitoring, Reporting, and Implementation (CD ¶¶ 82-102)	32
1. Status, Assessment, and Recommendations	32
2. Status of Substantial Compliance	33
Conclusion	35
Appendix A, Summary of Consent Decree Requirements	i

Introduction

This is the Second 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 June 30, 2011.¹ The OIM was established in January 2010² 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 (the “Court”) on March 23, 2009. The Monitor is required by the Consent Decree to “issue quarterly written, public reports detailing the Territory of the Virgin Islands’ compliance with and implementation of each substantive provision” of the Consent Decree.³

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.”⁴

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

¹ This Report references a limited number of events that occurred after June 30 to provide context and shed light on significant efforts that the VIPD made outside of the quarter to satisfy its Consent Decree obligations.

² After an initial procurement process, the Territory of the Virgin Islands and the VIPD contracted for the services of a monitoring team led by Michael R. Bromwich, a partner in the Washington, D.C. office of Fried, Frank, Harris, Shriver & Jacobson LLP (“Fried Frank”). In June 2010, the Independent and Deputy Independent Monitors joined President Obama’s administration. After interviews and further review, the Parties appointed William F. Johnson and Steven M. Witzel, partners in the New York City office of Fried Frank and former Assistant United States Attorneys in the United States Attorney’s Office for the Southern District of New York, as the Independent Monitors, effective August 13, 2010. Messrs. Johnson and Witzel continue to work with the police practices experts that were hired as part of the original OIM team.

³ 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/Vlindex.html>.

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

2 | **William F. Johnson and Steven M. Witzel**

or immunities secured or protected by the Constitution or the laws of the United States.”⁵ 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 Officers; the development of systems for managing and supervising Officers; and, the discipline of Officers found to have engaged in misconduct.

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

In order to reinvigorate the VIPD’s Consent Decree compliance process and meet its obligations under the Consent Decree Timetable, the Police Commissioner convened a Consent Decree Summit on St. Thomas on January 3 and 4, 2011 (the “Summit”).⁶ At the Summit, the Police Commissioner appointed senior VIPD personnel to lead and ultimately be held accountable for different aspects of the Consent Decree—Use of Force (Chief of the St. Croix District), Citizen Complaint Process (Chief of the St. Thomas District), Management & Supervision (Deputy Chief of St. Thomas), and Training (Training Director).⁷ The

⁵ CD ¶ 3.

⁶ The OIM discussed the Summit in the Fourth Quarterly Report of 2010 and the First Quarterly Report of 2011. For more information about the Summit, including objectives and participants, see the *Consent Decree Summit Addendum* at the end of those Reports.

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

Police Commissioner explained that each working group leader was responsible for: (i) designating a point person and recruiting other working group members; (ii) drafting an action plan; (iii) interacting with other VIPD personnel on interrelated Consent Decree issues; and, (iv) monitoring the working group's progress by attending and participating in as many meetings as schedules permit, but no less than twice a month.⁸

As the OIM previously reported, the Police Commissioner first announced his intent to retire from the VIPD in December 2010.⁹ After a distinguished career, the Police Commissioner ultimately retired from the VIPD on August 15. The OIM appreciates the Police Commissioner's long-standing dedication to the Consent Decree. Among other things, the Police Commissioner helped promote a tone of compliance, and created the Consent Decree working groups (discussed in detail below), which should have a lasting, positive impact on the Department's Consent Decree compliance process.

The OIM understands that a search for a new Police Commissioner is underway, and that the Governor appointed the Assistant Police Commissioner as the Acting Police Commissioner on an interim basis. The OIM anticipates that the Acting Police Commissioner will move ahead on all current and future efforts to satisfy compliance with the Consent Decree; he should not simply wait for a new Police Commissioner to be appointed to lead those efforts. We sincerely hope that a new Police Commissioner is appointed as soon as possible to provide leadership for the VIPD's critical efforts to comply with the Consent Decree.

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 June 30. This section covers the five main aspects of the Consent Decree: (1) Use of Force Policies & Specific Use of Force Policies; (2) Evaluation, Documentation, and Review of Uses of Force; (3) Citizen Complaint Process; (4) Management and Supervision; and, (5) Training. In light of the vital role that the working

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

⁹ OIM Fourth Quarterly Report of 2010 at VIII.

groups now play in the Department's Consent Decree compliance process, the Compliance Assessment section also provides a detailed update about the progress of each working group. Finally, the Compliance Assessment section includes recommended next-steps relating to each provision in the Consent Decree.

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,¹⁰ 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.¹¹ As part of this discussion, we provide an update about the progress of each of the working groups leading these efforts. Then, we include *recommendations* to assist the VIPD in achieving full and timely implementation of the Consent Decree's requirements.¹² A chart summarizing the VIPD's progress towards substantial compliance is included at the end of the Executive Summary.

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

A. Status and Assessment

As noted above, the Chief of the St. Croix District leads the Use of Force working group. The Chief made good progress during the Second Quarter organizing his working group. For example, the Chief appointed Department personnel from both Districts to his working group, designated a "point person" to spearhead certain tasks, and began holding regular working group meetings. The Use of Force working group also developed a draft action plan during the Second Quarter. While the draft action plan is still under development, it should ultimately identify relevant Consent Decree provisions, describe the tasks that must be completed to satisfy each provision, assign tasks to specific individuals, and set short-, mid-, and long-term deadlines relating to each provision. In addition, the Use of Force working group has started taking a more active role in the development of force-related policies. For

¹⁰ 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.

¹¹ 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.

¹² CD ¶ 85.

6 | William F. Johnson and Steven M. Witzel

example, at a May 29 meeting, working group members reviewed a draft version of the Investigation and Review of Use of Force Policy (which is discussed below), and forwarded its comments to the Policies and Procedures Committee (the “Committee”) for consideration.¹³

During the Second Quarter, the VIPD issued two additional force-related policies, the Canine Policy and Firearms Policy. Thus, through the end of the Second Quarter, the VIPD issued a total of ten force-related policies: (i) Use of Force; (ii) Reportable Use of Force; (iii) Impact Weapons; (iv) Electronic Control Weapon (“ECW”);¹⁴ (v) O.C. Spray; (vi) Vehicle Pursuit; (vii) Spike Strip; (viii) Off-Duty Official Action; (ix) Canine; and, (x) Firearms. In addition, the Department also previously implemented the Response to Resistance Reporting Form (“RRR”) (formerly known as the Use of Force Report) for VIPD personnel to document use of force events pursuant to the Reportable Use of Force Policy. We commend the Department, and in particular the Committee, for this significant and transformative accomplishment. However, the Department should recognize that this is just the beginning. The next step involves implementing those policies. Among other things, the Department must continue to train VIPD personnel on these policies and evaluate compliance across the Department. The Committee, Use of Force working group, and Training Division all have a roll to play in this next step.

While the Department has made substantial progress on the policy development front, additional work remains to be done. For example, the Department is developing an Investigation and Review of Use of Force Policy, which will permit the VIPD to investigate use of force events in proportion to the type of force used.¹⁵ The policy creates four separate use of force levels (from 1 to 4, with 1 being the most severe), and dictates what Supervisors must do to investigate use of force events at each level. The impetus for this policy was the feeling among many VIPD personnel that the existing Use of Force Policy imposes too great a

¹³ The Committee is charged with developing, reviewing, and revising the Department’s policies, and has six members: the Deputy Chief of St. John (chairperson); the Director of the Internal Affairs Bureau (“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.

¹⁴ The TASER is one example of an ECW.

¹⁵ During the Third Quarter, the Department submitted this policy to the DOJ on July 21 and the DOJ provided comments on the policy on August 11. We will provide an update about this policy in the next Report.

burden on Supervisors by requiring “all inclusive” force reviews for comparatively “minor” force incidents. VIPD personnel were particularly vocal about the unnecessary burden associated with audio or videotaping statements from witnesses and VIPD personnel relating to comparatively low-level uses of force, such as non-compliant handcuffing. The OIM is hopeful that this policy will mitigate many of those concerns and ultimately lead to greater compliance. The Department is also developing a policy to guide its Field Training Officer (“FTO”) Program. As discussed below, the FTO Program is a critical component of training new Officers.

In addition to finalizing the policies referenced above, the Department should identify any additional force-related policies that are needed. For example, we understand that the Department is considering developing a Special Operations Team Policy and Sniper Policy.

With respect to force-related policies, at the end of the Second Quarter, the VIPD is not in substantial compliance with the following Consent Decree provisions: ¶¶ 31 and 39-41. In addition to finalizing its outstanding force-related policies (as discussed above), the VIPD must implement all of its force-related policies (which includes, among other things, providing adequate training and ensuring that VIPD personnel understand and comply with each policy) in order to achieve substantial compliance.

B. Recommendations

With respect to further policy development, the Use of Force working group should continue working with the Committee to develop and/or finalize any outstanding force-related policies, including: (i) Sniper; (ii) Special Operations; (iii) Investigation and Review of Use of Force; and, (iv) FTO. The Department should also determine whether any additional force-related policies are needed. While the OIM stands ready to assist the VIPD in that process, VIPD personnel are best situated to evaluate the needs of their own agency.

In light of the significant number of recently issued policies, the Department should seek to create a consolidated and user-friendly manual to serve as a reference tool for VIPD personnel. It is critical that VIPD personnel be able to readily access the Department’s current policies. Unfortunately, the Department’s policies are currently spread across several different sources, including various manuals, field directives, and training bulletins. Moreover, many of those sources contain policies that conflict with each other and are out-of-date. The

development of a single policy manual would represent a significant step forward for the VIPD.

The Use of Force working group should also work with the Training Director to ensure that all VIPD personnel have been trained on the Department's recently issued force-related policies. As discussed below (*see infra* Section V, Training), the Department has not yet trained VIPD personnel on the following issued policies: 1) Vehicle Pursuit; 2) Canine; 3) Off-Duty Official Action; and, 4) Firearms. The Use of Force working group should also coordinate with the Training Director to develop training programs for any force-related policies that are still under development in order to be able to implement them as soon as they are approved by the DOJ.

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

A. Status and Assessment

1. Policies and Directives

At the end of the last quarter, on March 30, the Department issued the Reportable Use of Force Policy, which sets forth use of force reporting obligations for VIPD personnel. Some within the Department had previously pointed to the absence of such a policy to excuse the VIPD's underreporting of use of force events. Going forward, the OIM expects to see a sharp increase in the number of use of force events that are being reported.

During the Second Quarter, VIPD personnel also began using the RRR to document use of force events pursuant to the Reportable Use of Force Policy. As discussed in the First Quarterly Report of 2011, the Department trained VIPD personnel in both Districts on the Reportable Use of Force Policy and RRR in March (St. Thomas District) and April (St. Croix District);¹⁶ in response to negative feedback from the OIM, the Department retrained VIPD personnel in the St. Thomas District from June 13 – 17.¹⁷

In order to improve the quality and consistency of the Department's use of force investigations, the Use of Force working group created a "checklist" to guide Supervisors in conducting investigations;

¹⁶ OIM First Quarterly Report of 2011 at 19-22.

¹⁷ *See infra* Section V, Training.

that checklist was based on an earlier iteration created by the OIM's Police Practices Experts. The checklist should also help Supervisors (and Chiefs/Deputy Chiefs) efficiently determine whether RRRs are complete, and whether additional information and/or investigative steps are required. In addition, the checklist directs Supervisors to ensure that VIPD personnel are, among other things, documenting use of force events in the Use of Force log books (which are maintained at each Zone) and completing arrest and/or Form 1-As, as necessary. The Use of Force working group disseminated the checklist to Commanders in the St. Croix District on May 9. Since that time, the Use of Force working group has further refined the initial checklist in response to feedback from VIPD personnel, the Policy Consultant, and the OIM.¹⁸ The Chief of the St. Thomas District should consider disseminating the checklist to Commanders in his Zones. While certain policies/directives may be designed with a particular District or Zone in mind, the checklist (along with most force-related guides and tools) should be disseminated territory-wide to ensure consistency in expectations and practices, and compliance with the Consent Decree.

In the First Quarterly Report of 2011, we discussed our concern that the Department was arresting and subsequently releasing individuals without adequately documenting the arrest or whether any force was used.¹⁹ In response, the Use of Force working group disseminated an Arrest Directive on June 7, which: 1) delineates the differences between an investigative detention and an arrest; 2) outlines the procedure that VIPD personnel must follow if they arrest an individual, but later determine that they do not have an adequate basis for the arrest; and, 3) re-emphasizes the need for VIPD personnel to complete an RRR (in addition to a Form 1-A or arrest report) whenever force is used. For the reasons described above, the Chief of the St. Thomas District should also consider disseminating the Arrest Directive in his District.

The Chief of the St. Croix District also issued a directive concerning the use of security rings (which are used to secure suspects by handcuffing them to a fixed point) in the St. Croix District during the Second Quarter. The directive requires VIPD personnel to secure

¹⁸ The VIPD engaged a Policy Consultant 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.

¹⁹ OIM First Quarterly Report of 2011 at 8.

prisoners with security rings when a holding cell is not available or when there are multiple prisoners being held simultaneously in the same cell. The impetus for the directive was a June 21 incident in which an uncooperative and violent prisoner, who had already tried to escape, severely damaged the cell where he was being held. The use of security rings could have helped prevent the situation described above because the prisoner's range of movement would have been restricted. Nevertheless, the Chief of the St. Croix District must ensure that VIPD personnel in his District abide by the directive. Among other considerations, the security rings should not be used indiscriminately or to punish prisoners. For the reasons discussed above, the Chief of the St. Thomas District should evaluate whether security rings could play a helpful role in his District. Also, if security rings are to be used in both Districts, a department-wide directive should be crafted to circumscribe the manner in which they are to be used.

2. Survey of Use of Force Incidents

The OIM previously developed a "checklist" detailing precisely what the Consent Decree requires with respect to use of force reporting.²⁰ We subsequently provided a copy of that checklist to the VIPD and explained that we would be using it to evaluate the Department's use of force reporting practices.

The OIM observed a marked improvement during the Second Quarter in the quality of use of force investigations conducted by IAB in both Districts. IAB's investigation files were well-organized and generally contained all of the documentation required by the Consent Decree.²¹ The same cannot yet be said about the investigations conducted in the Zones (or units).

The Consent Decree and Reportable Use of Force Policy require Officers to notify a Supervisor following *any* use of force. Among other things, Supervisors must also respond to the scene, examine the subject for injury, interview the subject for complaints of pain, and ensure that the subject receives timely medical attention if necessary. According to the OIM's review of RRRs and force investigation files completed at the

²⁰ OIM First Quarterly Report of 2011 at 8.

²¹ A "complete" investigation file generally consists of the following: Form 1-A; arrest report; (signed) RRR; video or audio statement and photos; supervisor's investigative report with an analysis of the facts, evidence identified, and findings; documentation that all relevant individual's in the Department's chain of command reviewed and approved the completed investigation file; and, disposition letter.

Zone (or unit) level, too often an Officer did not promptly notify a Supervisor of a force incident. When an Officer did notify a Supervisor, the Supervisor commonly failed to respond to the scene to conduct an investigation. As a result, Supervisors often failed to identify and interview witnesses, and preserve evidence.

For example, the OIM reviewed a case involving an allegation that Officers illegally searched a subject and beat him. The subject filed a complaint at IAB. Though all involved Officers prepared RRRs, the file lacked documentation that any of the involved Officers notified a Supervisor following the incident. The file also did not indicate that a Supervisor was present at the scene or at the Zone when the Officers brought in the arrestee. As a result, the Supervisor lost the opportunity to collect and preserve evidence, which could have been important to the Supervisor's investigative findings. Further, based on the OIM's review of the file, when an IAB investigator received the case several days later, the file did not include photos of the arrestee at the time of booking, or witness statements.

In addition to deficiencies involving supervisory notification and response, with regard to witnesses, the OIM has observed that Supervisors commonly fail to canvass for witnesses following a use of force event. None of the investigative files that we reviewed this quarter documented that witness canvasses occurred. Even when the files indicated that witnesses existed, often a Supervisor had not interviewed them. For example, in one case that the OIM reviewed, the Form 1-A indicated that there were several witnesses associated with the incident; however, the file lacked any documentation that a Supervisor interviewed these witnesses. In another case, the investigating Sergeant failed to interview a subject who took a car from an acquaintance without permission and allegedly drove toward two responding Officers. Here, the Officers drew and pointed their weapons at the subject/car. This incident required that the involved Officers complete RRRs and a Supervisor conduct a force investigation. Based on the investigative file, the OIM observed that the investigating Sergeant failed to interview the subject, who was not arrested, or the car owner. While the Sergeant reported that he did not have contact information for these individuals, the OIM saw the car owner's name and address on the Form 1-A, and the subject's name on the RRR.

In addition, with regard to the preservation of evidence, the OIM notes that available evidence is not always collected and analyzed. In one case, a Zone level use of force investigation file indicated that store security cameras recorded a force incident. Yet, the OIM did not locate

any documentation in the file that a Supervisor obtained the videotape of the incident.

A more disturbing finding from the OIM's review of Zone level force-investigations is the frequency with which Officers use force against a subject and justify the use of force based on the subject's actions, but do not arrest the subject.²² As an example, the OIM reviewed a case that involved an Officer who fired two rounds at a subject. The Officer claimed that the subject initially pointed a gun at him before firing in return at the subject; both rounds missed the target. Though the subject was subsequently apprehended, he was not arrested. The file revealed that when Officers searched him and the surrounding area, they did not find a weapon. The file lacked an explanation for why the Officer released the subject without charging him. The shooting was deemed justified by the investigating Supervisor.

Other deficiencies that the OIM found in its review of Zone level investigations this quarter include: 1) RRRs that do not identify *all* present VIPD personnel or files that lack statements from those individuals;²³ 2) investigating Supervisors who ask leading questions; and, 3) Command level personnel who return files to investigating units for further work, but then fail to confirm that those units performed the additional investigative steps.

Despite these deficiencies, the OIM did review a number of complete files. For example, the OIM reviewed a file in which a Supervisor employed a conciliatory process to handle a minor misunderstanding between a complainant and an Officer. Here, the complainant alleged that an Officer smiled at her as his vehicle passed close to her as she was walking. The investigating Supervisor assembled

²² The OIM previously reported on the issue of "no arrests" or "unarrests" in the First Quarterly Report of 2011 at 8. Also, as mentioned *supra*, the Chief of the St. Croix District issued an Arrest Directive this quarter. Based on the OIM's findings, it is imperative that the VIPD disseminate this directive territory-wide and that Supervisors review arrest procedures with Officers during Roll Calls and Commanders' Calls.

²³ Based on our review, Supervisors commonly do not identify or take statements from VIPD personnel who are at the scene of an incident, but who did not witness the force incident. However, based on the OIM's understanding of the Reportable Use of Force Policy, RRRs should identify all VIPD personnel who were on the scene at the time of a force incident. Moreover, a complete file should contain statements from any such individuals, particularly negative accounts of the involved VIPD personnel's actions. The OIM also reviewed several cases where Command personnel who participated in the force incident did not give a statement.

the complainant, Officer, and a witness for a videotaped meeting and had each explain their actions, observations, and intentions. The Supervisor subsequently exonerated the Officer and, based on our review of the file, the complainant appeared to be satisfied with the outcome. The process described above is commonly referred to as a dispute resolution or conciliatory hearing. It is an accepted police practice for handling minor allegations or misunderstandings.²⁴

3. Supervisor Review of Uses of Force

At the end of the First Quarter, the Chief of the St. Croix District sent a memorandum to all Commanders in the St. Croix District that identified recurring deficiencies that often result in investigation reports being returned to the relevant Commander for further investigation.²⁵ The Chief of the St. Croix District subsequently assigned a member of the Use of Force working group to audit use of force investigation files at the Zones in both Districts. Unfortunately, based on that audit, the Use of Force working group found material differences between the quality of use of force investigations across the Districts.

While the Use of Force working group reported that Commanders in the St. Croix District were completing use of force investigations that complied with the Consent Decree's requirements, it also reported that Commanders in the St. Thomas District generally were not. This difference in quality highlights the need for better communication and cooperation across the Districts. Although the OIM has not yet independently confirmed the Use of Force working group's findings, we intend to do so during the next quarter. The OIM commends the Use of Force working group for undertaking this audit. If the Department ultimately decides to implement an audit unit,²⁶ that unit could also assume responsibility for auditing the Department's use of force files.

In response to the Use of Force working group's audit, the Chief of the St. Croix District directed his "point person" to meet with Commanders and Supervisors from the St. Thomas District to discuss the Consent Decree's use of force reporting requirements; those discussions took place from June 13-17. The Use of Force working group reports that it will continue to meet with VIPD personnel in both

²⁴ The OIM discussed the scope of a complaint resolution or supervisors' resolution process in the First Quarterly Report of 2011 at 14.

²⁵ OIM First Quarterly Report of 2011 at 8-9.

²⁶ *Id.* at 18.

Districts to improve the Department's use of force reporting practices and make them more uniform across the Districts.

The IAB Director also conducted an audit of use of force files located at the Chief's Office in the St. Thomas District. As a result, on June 20, the Director of IAB sent a memorandum to the Chief noting that he identified 11 case files that lacked two key documents, an investigative report and disposition letter. The VIPD reports that a similar review in the St. Croix District is underway, but was not completed during the Second Quarter.

As discussed below (*see infra* Section IV, Management and Supervision), the Department continues entering force-related information into IAPro to facilitate the collection, review, and evaluation of use of force events. While IAPro has been operational in the St. Thomas District for several quarters, it just recently came online in the St. Croix District.²⁷ In light of prior technical impediments, the VIPD implemented a manual tracking system in which all Zone Commanders received log books with sequentially numbered pages to record use of force events and citizen complaints.²⁸ On April 6, the Chief of the St. Croix District disseminated a directive in his District requiring all Commanders to regularly inspect log books to ensure that all force-related events and citizen complaints are being accurately logged. The OIM encourages the Chief of the St. Croix District to share a copy of this directive with the Chief of the St. Thomas District. We also reiterate our prior recommendation that the VIPD retain the log books described above as a back-up measure in the event that IAPro becomes inaccessible.

Finally, given that Supervisors play a critical role in investigating use of force events, the OIM has been concerned for several quarters that the Department's corps of first-line Supervisors (Corporals and Sergeants) may be stretched too thin. In order to evaluate the magnitude of this problem, the OIM has repeatedly requested the Department's organizational chart, active-duty roster, and current list of assignments for both Districts. Without providing any explanation, the VIPD has consistently declined to provide that information. The OIM also recently learned that a number of first-line Supervisors will be retiring within the next two quarters, exacerbating this problem. Therefore, it is imperative

²⁷ 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.

²⁸ VIPD February 2011 Status Report at 6.

that the Department promptly develop a plan to hire/retain additional first-line Supervisors (from within the VIPD or otherwise). In addition to hiring/retaining additional first-line Supervisors, the Department must also provide those individuals with adequate management training, which has been sorely lacking.²⁹

B. Recommendations

Because the Use of Force Policy and Reportable Use of Force Policy are critical aspects of the Department's Consent Decree compliance process, the VIPD should continue to emphasize the requirements of both policies through regular in-service training programs, such as Roll Calls and Commanders' Calls. In addition to providing periodic "refreshers," in-service training should be utilized to address common problems/deficiencies that Supervisors identify in the course of reviewing RRRs and interacting with Officers. To that end, we encourage the Use of Force working group and Director of IAB (or his designee) to continue their practice of auditing use of force files in both Districts in order to identify and remedy any issues.

We encourage the Chiefs and Deputy Chiefs to ensure that when they identify investigative deficiencies that they demand action from the responsible Supervisor, require the Supervisor to complete the additional investigative steps by a date certain, and hold him/her accountable if he/she fails to adequately follow up. As mentioned above, during this quarter, we observed that the Chiefs and Deputy Chiefs gave more attention to force investigations, particularly on St. Croix. Yet, we also observed that when the Chiefs and Deputy Chiefs found deficiencies in the investigation that warranted further action, and returned the file to the investigating Supervisor, there was no follow up.

The OIM also encourages the Chief of St. Croix District to share the following directives with the Chief of the St. Thomas District, and for the Chief of the St. Thomas District to consider implementing them in his District: 1) Arrest; 2) Security Ring; and, 3) Logbook. With respect to most force-related issues, there is no reason to have different practices in each District. In fact, the current lack of uniform practices across the Districts makes it more difficult for the Department as a whole to achieve

²⁹ One available source of competent management training is the FBI National Academy. Tuition is free for this program, though transportation and incidental costs while attending are the Department's responsibility. We recommend that the VIPD consider sending additional Supervisors to this program.

substantial compliance. We implore the Acting Police Commissioner to set uniform standards (as already exist for force-related policies) for both Districts.

For example, during the Second Quarter, the Chief of the St. Thomas District declined to disseminate certain force-related materials prepared by the Use of Force working group because they had not been approved by the Police Commissioner, which is apparently the ordinary procedure. While the Police Commissioner (or the Assistant Police Commissioner, as his designee) could have quickly resolved this situation by clarifying the required procedure, he inexplicably allowed it to go unresolved. As a result, those materials still have not been disseminated in the St. Thomas District, at least as far as the OIM is aware. The Acting Police Commissioner should also make it easier for the Use of Force working group (and any other working group) to disseminate materials in both Districts.

Finally, as we have repeatedly requested, the Department should also provide the OIM with its organizational chart, active-duty roster, and current list of assignments for both Districts. We also encourage the VIPD to assess and identify the appropriate number of Supervisors that it requires to efficiently deliver police services and reach substantial compliance with the Consent Decree.

Although the Department has made progress by issuing and beginning to train on the Use of Force Policy and Reportable Use of Policy, it is not yet in substantial compliance with ¶¶ 32-38 of the Consent Decree, which, among other things, require the VIPD to evaluate, document, and review *all* uses of force. In light of the force-related training programs that have taken place over the past two quarters, the OIM is hopeful that the VIPD will be able to substantially comply with these provisions within the next two quarters.

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

As noted above, the Chief of the St. Thomas District leads the Complaint Process working group. During the Second Quarter, the Chief of the St. Thomas District appointed working group members, designated a “point person,” and developed an action plan. The Complaint Process working group also began holding regular meetings.

While the Consent Decree does not require DOJ approval for complaint process-related policies, we commend the VIPD for voluntarily seeking technical assistance from the DOJ on these policies.³⁰ We understand that the DOJ provided the VIPD with comments on draft versions of the Acceptance of Citizen Complaints Policy and Investigating Misconduct and Citizen Complaints Policy on April 8. While the Department ultimately issued these policies after the end of the Second Quarter, on August 2, that process took much too long (even considering the Department's focus on finalizing a number of force-related policies at that time). During that nearly four-month period, the Department was actively promoting the citizen complaint process through a public information campaign, despite the fact that the Department was not yet fully equipped to receive and investigate citizen complaints.

Until the Department issued the Acceptance of Citizen Complaints Policy and Investigating Misconduct and Citizen Complaints Policy, the complaint process was governed by the Processing Citizen Complaints Directive (#014-2010) (the "Directive"), which was issued in October 2010.³¹ On April 13, the Chief of the St. Thomas District disseminated Directive #2011-4, which reemphasized the Directive's requirements. Among other things, the Directive required VIPD personnel to carry compliment/complaint brochures and complaint forms in their vehicles at all times while on-duty, and prohibited VIPD personnel from discouraging anyone from filing a complaint.

In response to feedback from VIPD personnel and the OIM, the Department revised its complaint forms, brochures, and posters during the Second Quarter. These revisions included: (i) inserting a complaint/compliment hotline number (1.800.391.7376); (ii) minimizing the size of the warning regarding the filing of false complaints; and, (iii) adding language explaining that VIPD personnel were available to assist individuals in completing complaint forms. In addition, the Department changed the heading on its complaint brochure from "Residents Rights" to "Your Rights, Report Wrongful Conduct" to highlight that the complaint process is available to residents and non-residents.

The VIPD subsequently procured six thousand English language copies of the revised complaint form and brochure and one hundred

³⁰ See, e.g., OIM First Quarterly Report at 11-12.

³¹ *Id.* at 19; see also *infra* § V (Training).

copies of the revised poster, which were then disseminated department-wide and in the local community. According to the Complaint Process working group, all Zones in both Districts received these materials during the Second Quarter. The VIPD has also posted the revised complaint materials on its website.³²

Under both the Directive and the Investigating Misconduct and Citizen Complaints Policy, VIPD personnel are required to carry complaint/compliment brochures and forms in their vehicles while on-duty. To help VIPD personnel comply with that requirement, the Compliance Coordinator procured clear bags, which will be placed in all marked and unmarked VIPD vehicles, to store those materials. During the Second Quarter, the Complaint Process working group conducted inspections to confirm that VIPD personnel were carrying the required complaint process materials in their vehicles. For example, the Citizen Complaint working group reports that it inspected the following units in the St. Thomas District and found that they were in compliance with the Directive: 1) the Bike Unit; 2) Zone C; and, 3) the Red Hook Command.³³ The OIM commends the Complaint Process working group's initiative and looks forward to reviewing documentation relating to these inspections.

The OIM also conducted an inspection of VIPD vehicles to check whether they were equipped with the required complaint process materials. Of the nine vehicles inspected, six contained the required materials. Notably, VIPD personnel mistakenly believed that only patrol units were required to carry these materials; in fact, this requirement applies to all VIPD vehicles (both marked and unmarked, patrol or otherwise). The Commanding Officer who is charged with equipping the Department's vehicles with the required complaint process materials assured the OIM that all VIPD vehicles would have the required materials going forward. The OIM will conduct additional inspections of VIPD vehicles and facilities in the next quarter to test compliance. In addition, the OIM will question VIPD personnel to ensure that they understand the complaint process and do not engage in behavior that would discourage anyone from filing a complaint.

The VIPD also reports that it identified an individual to translate the revised English version of the complaint/compliment brochure into Spanish. Likewise, the VIPD has identified an individual to translate the

³² See, http://www.vipd.gov.vi/Consent_Decree.aspx.

³³ VIPD July 2011 Status Report at 11.

brochure into Patois. As soon as these translations are complete, the VIPD will bulk print and distribute these materials department-wide and in the local community.³⁴ While the Consent Decree requires VIPD vehicles to be equipped with English, Spanish, and Patois language versions of the required complaint process materials, the Zone Commander who serves as the “point person” for the Complaint Process working group stated that VIPD vehicles were only currently equipped with English language materials. According to the Zone Commander, Spanish, and Patios materials are anticipated sometime in August.

With regard to the VIPD’s ongoing public information campaign, the VIPD reports that radio and television stations in both Districts continue to air public service announcements to promote the Department’s citizen complaint process. According to the VIPD, there has been a significant increase in the number of complaints that residents have filed since the Department began promoting the citizen complaint process in October 2010.

Finally, in order to make it easier for individuals to file complaints at the Zones, the VIPD previously reported that the Compliance Coordinator procured bulletin boards, which must be prominently displayed in each Zone in both Districts, to identify the Commander and on-duty Shift Supervisor. According to the VIPD, Shift Supervisors are responsible for updating the board with their name when their shift begins. The VIPD previously reported that it planned to issue additional guidance regarding the bulletin boards; however, the OIM never received any such documentation. The OIM visited several Zones in both Districts during the Second Quarter to monitor whether the bulletin boards were being used. Although the bulletin boards have been installed in all of the Zones that we visited, they were not all being kept up to date. For example, the board in Zone A in the St. Thomas District did not have the name of the on-duty Shift Supervisor posted when we visited.

Although the VIPD has made significant progress with aspects of the citizen complaint process, it is not yet in substantial compliance with ¶¶ 42-45 of the Consent Decree. As explained in the Recommendations section below, among other things, the VIPD must provide training on the Acceptance of Citizen Complaints Policy and Investigating Misconduct and Citizen Complaints Policy, which were both finalized on August 2.

³⁴ *Id.*

2. Recommendations

The VIPD's complaint process was previously hampered by the absence of definitive policy guidance. That issue is now moot in light of the recently issued Acceptance of Citizen Complaints Policy and Investigating Misconduct and Citizen Complaints Policy. Despite having previously trained VIPD personnel on the then in-effect Directive, the Department must provide additional training on these policies. The Complaint Process working group's action plan acknowledges the need for training on the new policies and also expressed the intent to vet these training programs before the Department offers them to VIPD personnel. To that end, the Complaint Process working group should work with the Training Director to start training on these policies. The Complaint Process working group should also work with the Director of IAB to assess the workload impact that these policies will have on IAB staff, who accept the bulk of complaints at their offices, and to allocate personnel accordingly.

The Complaint Process working group should also continue to confirm whether VIPD vehicles are equipped with the required complaint process materials and that the Zones are properly utilizing the bulletin boards described above. Similarly, once training on the Acceptance of Citizen Complaints Policy and Investigating Misconduct and Citizen Complaints Policy have been completed, the Complaint Process working group should periodically test whether VIPD personnel understand the complaint process and are responsive and courteous to individuals seeking to file complaints. As we have previously emphasized, any such inspections should be well-documented (when and where did the inspection take place, what were the results, etc.).

Finally, we understand that the Director of IAB periodically compiles statistics relating to the complaint process. The OIM encourages the Complaint Process working group to help the Director of IAB compile and review that information as needed. In addition to providing a good overview of the Department's complaint process, that information will help the Department identify emerging trends and respond appropriately.

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

1. Status and Assessment

As discussed above, the VIPD's investigation of citizen and command complaints is now governed by the Investigating Misconduct

and Citizen Complaints Policy. The OIM cannot overstate the importance of promptly beginning to train on that policy.

In an effort to help the VIPD efficiently resolve certain comparatively less serious complaints, the OIM previously encouraged the Department to consider a policy that would permit Supervisors and IAB Agents to resolve those cases based on a preliminary investigation.³⁵ Such a policy would allow VIPD personnel to focus their attention on complaints of a more serious nature. Because the Department recently issued the Investigating Misconduct and Citizen Complaints Policy (but has not yet trained on it), this is an ideal time to implement such a policy. The Complaint Process working group should evaluate the Department's interest in implementing such a policy as soon as possible.

The OIM also reiterates the need for the VIPD to train Supervisors on the preponderance of the evidence standard (which the VIPD uses when investigating complaints) and on evaluating the credibility of witnesses.³⁶ The OIM previously reported that the VIPD's training on the preponderance of the evidence standard fell short; specifically, that the instructors lacked the necessary legal background.³⁷ Unfortunately, the VIPD has been slow to respond to the OIM's concerns. For example, during the Second Quarter, the Training Division identified an attorney to conduct the preponderance of the evidence training in the St. Croix District, but has not yet identified an attorney to conduct a similar training in the St. Thomas District. Moreover, with respect to determining the credibility of witnesses, we note that the Training Division first received an intra-departmental request to hold such a training program on March 12, 2010.³⁸ The Complaint Process working

³⁵ OIM First Quarterly Report of 2011 at 13-14. To appropriately limit the scope of such a policy, the OIM suggested the following limitations and guidelines: (i) restrictions on the type of allegations that can be closed by Supervisors after a preliminary investigation; (ii) tiered levels of investigation such that complaints against VIPD personnel who have repeatedly violated Department policies are ineligible for this process; (iii) procedures to ensure oversight by the Chief, Deputy Chief, and the IAB, empowering each to overrule the Supervisor; (iv) procedures to inform complainants about this alternative process, including their ability to accept/decline it, and the actions taken by the VIPD during 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.

³⁶ The Consent Decree requires Officers to evaluate witness credibility using a non-exhaustive list of factors (which are set forth in the Consent Decree) when investigating complaints and use of force events. CD ¶ 51.

³⁷ OIM First Quarterly Report of 2011 at 15.

³⁸ OIM Second Quarterly Report of 2010 at 18.

group should work with the Training Director to ensure that VIPD personnel are trained on both standards during the next quarter.

Finally, the Consent Decree requires the VIPD to institute a centralized numbering and tracking system for all complaints. However, technical roadblocks have prevented the Department from being able to feasibly implement a unitary system across both Districts. As a result, the VIPD created separate databases (each with a distinct numbering system to track complaints) for the St. Croix and St. Thomas Districts. Although the databases are separate, they can both be accessed from either District. During the Second Quarter, the DOJ and VIPD discussed whether such a system satisfied the Consent Decree's requirement for a "centralized" numbering and tracking system. The DOJ ultimately determined (during the Third Quarter of 2011) that this alternative system complied with the Consent Decree. The OIM will discuss this further in the next Report.

At the end of the Second Quarter, the VIPD is not in substantial compliance with ¶¶ 46-58 of the Consent Decree concerning the investigation of complaints.

2. Recommendations

The VIPD must provide training programs concerning the following policies/standards during the next quarter: 1) Acceptance of Citizen Complaints Policy; 2) Investigating Misconduct and Citizen Complaints Policy; 3) preponderance of the evidence standard; and, 4) evaluating the credibility of witnesses. As we have repeatedly emphasized, the Department will not be able to achieve substantial compliance until it provides those training programs.

The Complaint Process working group (in consultation with the Committee) should also consider developing a policy that would permit Supervisors and IAB Agents to close certain complaints based on a preliminary investigation. Such a policy could help ease the administrative burdens associated with comprehensively investigating comparatively less-serious complaints.

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

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

1. Status and Assessment

As explained above, the Deputy Chief for St. Thomas leads the Management & Supervision working group. We previously commended

the Management & Supervision working group for getting off to a strong start.³⁹ For example, by the end of the First Quarter, the Deputy Chief for St. Thomas designated a “point person” and other VIPD personnel as members of the Management & Supervision working group, held four meetings, and submitted a draft action plan to the OIM. The Management & Supervision working group continued to meet during the Second Quarter, and further refine its action plan.

The Consent Decree requires the VIPD to implement a RMS to identify potentially problematic behavior from VIPD personnel at an early (and hopefully remediable) stage. The VIPD chose IAPro as its RMS, and has been working to bring it online for several quarters. After a series of lengthy and frustrating delays, the VIPD reports that IAPro is now functional in the IAB offices in both Districts.⁴⁰ The OIM commends the Director of IAB and the Acting Director of MIS—who was only appointed to that role in January—for helping to bring this project much further along. Going forward, the OIM encourages the Deputy Chief of St. Thomas (and other members of the Management & Supervision working group) to take a more active role in supervising the implementation of IAPro.

The VIPD also reports that it is working with the IAPro vendor to install the Blue Team component of IAPro on all Supervisors’ computers in both Districts.⁴¹ Blue Team will allow VIPD personnel to enter force-related information into IAPro while in the field. Once that information is uploaded into IAPro, it will be accessible to Supervisors and IAB personnel. Blue Team installation, as well as a related train-the-trainer program, took place in July in the St. Thomas District; a parallel training will take place in the St. Croix District thereafter. The OIM will report on those training programs (as well as the VIPD’s overall progress implementing Blue Team) in the next quarter.

The Management & Supervision working group focused much of its attention during the Second Quarter on the Department’s Data Input Plan. Although the DOJ approved the VIPD’s Data Input Plan on March

³⁹ VIPD First Quarterly Report of 2011 at 16.

⁴⁰ The OIM recently learned that the Department may need to increase the storage capacity of its servers to accommodate IAPro. We will report on this development in the next quarter.

⁴¹ At the end of this quarter, we learned that Officers and Supervisors could not access Blue Team from many locations in both Districts. The OIM will report on this issue next quarter.

22, the Department has not yet disseminated the plan department-wide; we encourage the VIPD to do so during the next quarter. As previously discussed, the Data Input Plan identifies information about VIPD personnel (including, but not limited to, uses of force, disciplinary issues, motor vehicle accidents, and sick days) that the Department will enter into IAPro to facilitate its risk management function. The Management & Supervision working group contacted the individuals (some of whom work outside the Department) who are ordinarily responsible for maintaining that information and worked with them to develop an efficient process to enter that information into IAPro.

The OIM recently became aware of an issue that could make it difficult for the Department to link certain documentation to particular VIPD personnel. Based on our monitoring, we understand that VIPD personnel have three distinct numerical identifiers—badge number, employee number, and a third number, which is assigned by the Virgin Islands Territorial Emergency Management Agency. In reviewing Form 1-As and RRRs, the OIM observed that VIPD personnel rarely enter multiple identifiers. While the badge number is the most commonly used identifier, the Districts do not consistently issue and record badge numbers. As such, the Department may not be able to connect badge numbers to the corresponding individuals. The Management & Supervision working group should take this issue into consideration as the Department implements the Data Input Plan. In addition, the Acting Police Commissioner should require the Chiefs to ensure that badge assignments are consistently documented in their respective Districts.

IAB is in the process of entering information from as early as 2009 for the St. Thomas District into IAPro; presently, IAB is only entering new information for the St. Croix District (though IAB intends to and the OIM encourages them to also enter historic records for St. Croix when feasible). Because IAPro seeks to identify potentially problematic conduct based on established norms, IAPro functions best when it has a wealth of information to analyze. Unfortunately, despite making multiple requests for additional personnel, IAB does not have the resources (while also carrying out its other functions) to complete this process on a reasonable time-line. The Director and Assistant Director of IAB previously hired an intern to assist with entering historic information into IAPro. The OIM applauds that type of creative problem solving, and invites the Management & Supervision working group to develop other solutions.

Another missing piece in the RMS is the Department's RMS Protocol, which sets forth various thresholds for supervisory review. For

example, if an Officer receives more than X number of complaints within Y period of time, IAPro will alert the Officer's Supervisor to the potential issue; X any Y will be set forth in the RMS Protocol based on Department norms and generally accepted police practices. The DOJ provided the Department with comments on a draft version of the RMS Protocol on June 14. As such, we expect the Department to finalize the RMS protocol in the upcoming quarter.

In order to educate VIPD personnel about the Department's new RMS, the Director of IAB invited Samuel Walker, Ph.D., a highly regarded criminologist and expert on early intervention programs ("EIPs"), to make a series of presentations in the St. Thomas and St. Croix Districts during the Second Quarter. The day-long presentations were conducted on May 16, 2011 on St. Thomas and May 17, 2011 on St. Croix. Approximately 60-70 VIPD personnel attended each session. Dr. Walker gave a historic overview of EIPs and discussed how other departments have benefited from the implementation of EIPs.

Unfortunately, many participants seemed disinterested in the presentation. Instead, many participants used Dr. Walker's presentation (and the question and answer session that followed) to focus on the VIPD's new complaint-related policies—specifically, issues relating to the filing of false complaints. As the OIM has emphasized on prior occasions, the VIPD needs to move past its disproportionate concern with false complaints (which are illegal) and embrace the complaint process. The VIPD should schedule additional information sessions to further educate VIPD personnel about the Department's EIP.

Given that the Department just began to bring IAPro online (and is still in the process of implementing the Data Input Plan and finalizing the RMS Protocol, among other things), it is not surprising that the Department has not yet substantially complied with ¶¶ 59-68 of the Consent Decree.

2. Recommendations

The Management & Supervision working group must take a more active role in the implementation of the Department's RMS; while the Director and Assistant Director of IAB and the Acting Director of MIS have done a laudable job, they need others to contribute their time and energy as well. Among other things, the Management & Supervision working group should: 1) identify personnel to assist with entering historic information into IAPro; 2) work with the Training Director to develop training relating to the Data Input Plan, RMS and Blue Team;

and, 3) finalize the Department's RMS Protocol. We expect the Department to issue the finalized RMS Protocol during the next quarter.

B. Oversight (CD ¶ 69)

1. Status, Assessment, and Recommendations

The VIPD reports that the Committee is currently reviewing a draft version of the audit protocol for the RMS. As such, the VIPD has not yet substantially complied with ¶ 69 of the Consent Decree. The VIPD understandably delayed working on the audit protocol until it finalized the Data Input Plan and RMS Protocol. Now that those items are complete/nearly complete, the Department should focus its attention on finalizing the audit protocol.

The VIPD previously reported that it was considering creating an audit unit to evaluate the effectiveness of internal controls across the Department. 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 VIPD did not provide an update about this plan in its July 2011 Status Report. As such, the VIPD should provide a status update in its next Status Report.

C. Discipline (CD ¶¶ 70-72)

1. Status, Assessment, and Recommendations

During the First Quarter, the DOJ approved the Disciplinary Matrix, which provides disciplinary guidelines for different types of misconduct.⁴² On April 26, the DOJ provided the VIPD with comments on its Disciplinary Policy, which works in conjunction with the Disciplinary Matrix.⁴³

During the Second Quarter, the VIPD indicated that it intends to resubmit a revised version of the Disciplinary Policy to the DOJ in the near future. The OIM encourages the VIPD to finalize the Disciplinary Policy during the next quarter because, in conjunction with the

⁴² OIM First Quarterly Report of 2011 at 19.

⁴³ While the Consent Decree does not require DOJ approval for the Disciplinary Policy, the VIPD voluntarily submitted it to the DOJ for its review, and the DOJ agreed to provide technical assistance.

Disciplinary Matrix, it should help foster the more even-handed application of disciplinary sanctions. As previously reported, the OIM has observed first-hand (and heard about anecdotally) the Department's inconsistent and disparate application of disciplinary sanctions (for which there is no reasonable explanation).⁴⁴ Moreover, given the importance of the Disciplinary Policy and Matrix, it is important that the Training Division develop corresponding training programs promptly.

In addition, the VIPD reports that the Committee intends to hold a meeting with the Chiefs and Deputy Chiefs, as well as the Police Benevolent Association and Law Enforcement Supervisors' Union, in both Districts to discuss the Disciplinary Policy and Matrix in upcoming quarters. The VIPD should set firm dates for these meetings and provide the OIM with updates as soon as they take place.

At the end of the Second Quarter, the VIPD is not in substantial compliance with ¶¶ 70-72 of the Consent Decree.

V. Training (CD ¶¶ 73-81)

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

1. Status and Assessment

As explained above, the Training Director leads the Training working group. Notwithstanding the recent uptick in activity by the Training Division, the Training working group continues to lag behind the other working groups. By the Second Quarter, the Training working group still has not provided the OIM with documentation relating to its meetings (such as minutes or agenda) or an action plan. There is no excuse for the Training working group's lack of progress in this regard.

Nevertheless, the Training Division conducted a number of training programs during the Second Quarter. For example, the Training Division held training programs on the ECW and O.C. Spray Policies during the weeks of May 23 and 30. Representatives from the OIM observed both training programs. Although the instructors adequately explained the mechanics of operating each tool and, with respect to the TASER, emphasized the need to make sure that medical care is administered to the subject after each use, the instructors failed to provide sufficient guidance about the scenarios in which such tools should or should not

⁴⁴ See, e.g., OIM Fourth of Quarterly Report of 2010 at 24.

be used. In addition, while the instructors explained that RRRs must be completed following the use of such tools, they did not adequately explain how to do so. The Training Division could have avoided these deficiencies by more thoroughly vetting the training programs. As we have repeatedly emphasized, the Training Division should carefully vet *all* training programs.

The VIPD also reports that it conducted eight hours of in-service FTO training in both Districts in June. In advance of those training programs, the Director of Training sent a memorandum to the Chiefs in both Districts requesting that they permit their Supervisors and Commanders to attend. The VIPD did not report on whether the Chiefs responded to this memorandum. Moreover, we are concerned that the Training Director does not appear to have the authority to directly order VIPD personnel to attend training programs. We suggest that the Acting Police Commissioner allow the Training Director to directly order VIPD personnel to attend required training programs (after the Training Director has consulted with the Chiefs). This would be a more streamlined process and engender greater supervisory accountability.

With respect to the FTO Program, the OIM seeks more information about how FTOs are selected and trained. To that end, the VIPD should provide the OIM with copies of any lesson plans or other materials that were used to train the current FTOs. The VIPD should also provide the OIM with a roster all of current FTOs (with their service records and disciplinary histories attached).

Finally, the Training Division retrained 156 Supervisors and Officers and 30 Recruits on the Citizen Complaints Directive, Use of Force Policy, Reportable Use of Force Policy, and RRR from June 13-17 on St. Thomas. The VIPD provided this retraining in response to feedback from the OIM that the initial training (which took place on St. Thomas in late March) was inadequate.⁴⁵ The OIM is pleased to report that the retraining was a marked improvement from the prior training.⁴⁶ Notably, however, the Training Division primarily relied on the instructors who led the same training on St. Croix in early April. Going

⁴⁵ OIM First Quarterly Report of 2011 at 20-21.

⁴⁶ With regard to the retraining, the OIM notes that the Training Division did not provide the participants with copies of the policies that were being trained on. As previously stated, it is imperative for VIPD personnel to have access to all Department policies. As such, the Department should disseminate those policies promptly.

forward, the Training Division needs to develop greater capacity in both Districts. To that end, the Training Division should encourage St. Croix-based instructors to spend time on St. Thomas and vice-versa. The Training Division (like the VIPD as a whole) must begin functioning more cohesively across the Districts.

On April 20, the Training Director sent a memorandum to the Police Commissioner regarding the Officers and Supervisors who had unexcused absences from the force-related and complaint process trainings in March and April. To the OIM's knowledge, the Training Director has not received a response to this memorandum (despite sending it to the Police Commissioner more than three months ago). The OIM is interested in receiving additional documentation about these "no shows" including any potential disciplinary actions meted out to any Officers and/or Supervisors by the Department for their noncompliance. We note that the Training Director has rescheduled these "no shows" for retraining.

The Training Division has done a good job over the past two quarters keeping the OIM up to date about upcoming training programs. To that end, the Training Division recently disseminated a training schedule through September. Upcoming training programs include: in-service (40 hours); C.P.R.; Glock Armors; .223 Armors; Noise & Tint Meter; Tactical Marine; FTO train-the-trainer certification; in-service FTO; basic and advanced SWAT; defensive tactics; expandable baton/O.C. Spray; Spike Strip; Citizen Complaint Review; and, Investigating Use of Force. Notably, that schedule does not include training programs relating to a number of recently issued policies, including the Vehicle Pursuit Policy, Canine Policy, and Firearms Policy.⁴⁷ The Training Division must provide training for each of those force-related policies as soon as possible. As we have repeatedly stressed, the Training Division should start the process of developing training programs for policies well before the Department issues them. To facilitate that process, the Training Division should be in regular contact with the Committee and working groups.

⁴⁷ The VIPD reports that its Firearms Simulation and Training System in both Districts are outdated. The Department has obtained a quote from a vendor to replace these machines. To the extent that these machines impede the Training Division from training on the Firearms Policy, we recommend that the VIPD replace them promptly.

We are pleased to learn that the Training Director has met with an attorney in the Attorney General's Office in St. Croix to consult on various legal issues that are relevant to force-related training. The OIM has repeatedly recommended that the Training Division consult an attorney because many training materials have law-related content that should be reviewed and approved by a qualified attorney. Furthermore, the Department should ensure that *all* law-related training is delivered by an attorney. The Training Division's past practice of using physical skills instructors or former university psychology lecturers to teach legal aspects of policing is ill-advised and will not be deemed compliant.

The Training Division recently gauged interest in holding defensive spray, defensive tactics, and expandable baton instructor certification programs by disseminating a department-wide announcement on June 1 and requesting feedback by June 30. Given that it is critical for VIPD instructors to be certified on those tools, the Department should direct instructors to attend those programs if too few step forward voluntarily.

The Training Division has identified vendors to lead a number of the training programs described above. Unfortunately, the VIPD has not been able to make final arrangements with these vendors because of resistance from the Virgin Islands Department of Property and Procurement ("Property and Procurement")—the unit responsible for approving contracts between the VIPD and third-parties. The Training Division submitted a memorandum, dated June 8, to the Police Commissioner notifying him about this resistance. As far as the OIM is aware, the Police Commissioner did not respond during the Second Quarter. Nevertheless, the OIM is hopeful that the Acting Police Commissioner will be able help obtain approval for these outstanding contracts expeditiously.

The Training Division has also made substantial strides documenting various aspects of its training program during the Second Quarter. For example, the Training Division developed an evaluation form, titled "Training Division Course Evaluation," for VIPD personnel to evaluate training programs that they attend. The VIPD reports that Officers and Supervisors completed evaluation forms following the recent training programs on the Use of Force Policy, Reportable Use of Force Policy, and Citizen Complaints Process Directive in March, April and June on both Districts. Although the Training Division provided the OIM with many records associated with its training activities this quarter (sign-in sheets, copies of PowerPoint presentations, etc.), it did not provide these evaluations. As such, the OIM requests copies of these evaluations. Similarly, the VIPD reports that the Director of Training is

working with MIS to develop a database of training records. In the interim, the Training Division is updating its file system in both Districts so that records are color-coded.

Finally, the VIPD has started taking a more active role in the Peace Officer Standards and Training Council ("POST").⁴⁸ The VIPD reports that POST is working to establish, among other things, minimum training standards for Virgin Islands Peace Officers and minimum annual re-recertification requirements for instructors. In addition, POST is working with the University of the Virgin Islands ("UVI") and UVI's Community Engagement and Lifelong Learning Center to review lesson plans and instructor qualifications. We commend the VIPD's effort to reinvigorate the POST.

2. Recommendations

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

The OIM also encourages the Training Division to work with the Complaint Process working group to implement training programs for the Acceptance of Citizen Complaints Policy and the Investigating Misconduct & Citizens Complaints Policy, which were both issued on August 2. Likewise, the Training Division should work with the Use of Force working group to implement training programs for the Vehicle Pursuit Policy, Canine Policy, and Firearms Policy, all of which have been issued. More generally, the Training Division should remain in close contact with each of the working groups to develop training programs for

⁴⁸ POST is comprised of the following voting members: the Police Commissioner; the Attorney General or his designee; the Fire Service Director; the Chiefs of the St. Thomas and St. Croix Districts; Director of Enforcement from the Department of Planning and Natural Resources; a representative from the Bureau of Corrections; and, the presiding Judge of the Superior Court. The non-voting members of POST include: the Director of Training; representatives from V.I. law enforcement agencies; and, representatives from law enforcement unions. VIPD June 2009 Status Report at 28.

policies/directives that are still under development or that the Department has recently issued. The Training Division should pay particular attention to the development of the FTO Policy, which should be finalized in the next two quarters, given the significant role that it should play.

The Acting Police Commissioner should also work with Property and Procurement to resolve any issues relating to the outstanding contracts with the Training Division's vendors. If needed, the Acting Police Commissioner should seek additional assistance from the Attorney General or Governor's Office. These training programs are crucial, and administrative obstacles should not prevent them from taking place.

Finally, the OIM expects the Training Division to maintain and strengthen its relationship with the POST.

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

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

1. Status, Assessment, and Recommendations

On July 7, the VIPD submitted its Ninth Quarterly Status Report to the DOJ and OIM. For the second straight quarter, the VIPD provided its report to the DOJ and OIM on time. The Ninth Quarterly Status Report contained a more detailed description of the VIPD's efforts to move towards substantial compliance, as compared to prior status reports. The OIM also commends the Compliance Coordinator for his efforts to collect updates from VIPD personnel, who are responsible for areas of Consent Decree compliance. As we have repeatedly stated, it is in the VIPD's interest to share as much information with the OIM as possible because we can only report on information that we learn through our own monitoring activities or the VIPD's quarterly status reports.

2. 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 provisions and remain in compliance for two years.⁴⁹ The Consent Decree Timetable, which was jointly filed with the United States District Court for the Virgin Islands by the VIPD and the DOJ in November 2010, sets forth dates by which the VIPD must substantially comply with each Consent Decree provision. For example, under the Consent Decree Timetable, the VIPD should have substantially complied with ¶¶ 32-58, 70, and 72 by May 31 and ¶¶ 60, 61, and 73-81 by June 30. As explained below, with very few exceptions, the VIPD has failed to satisfy its obligations under the Consent Decree Timetable.

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

- In January 2010, the Parties to the Consent Decree 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 to the Consent Decree and the Monitor (CD ¶ 88); and,
- Beginning in June 2009, the VIPD began issuing quarterly status reports delineating the steps taken by the VIPD to comply with the Consent Decree (CD ¶ 98).

As mentioned above, although the VIPD has already issued ten force-related policies, it has not yet fully implemented them as required by the Consent Decree.⁵⁰ In addition, we understand that the Department is still contemplating several additional force-related policies.⁵¹ As such, the Department has not yet complied with ¶¶ 31-41,

⁴⁹ CD ¶ 103.

⁵⁰ As defined in the Consent Decree, "implement" refers to the "development or putting into place of a policy or procedure, including the appropriate training of personnel." CD ¶ 30.

⁵¹ While the VIPD may develop additional force-related policies in the future (beyond those that are currently under development or required by the Consent Decree), those policies will not restart the two year substantial compliance period.

which requires the VIPD to review, revise, and implement *all* of its force-related policies.

Similarly, while the VIPD's citizen complaint process is well underway, the Department must, among other things, train Department personnel on the recently issued Acceptance of Citizen Complaints Policy and the Investigating Misconduct & Citizen Complaints Policy. The Department must also demonstrate that the complaint process is functioning properly in order to substantially comply with ¶¶ 42-58.⁵²

⁵² The OIM will evaluate the impact of the Department's issuance of the Acceptance of Citizen Complaints Policy and the Investigating Misconduct & Citizen Complaints Policy (which occurred on August 2) on substantial compliance in the Third Quarterly Report of 2011.

Conclusion

While we noted some improvement during the Second Quarter, the Department is still very far from satisfying its obligations under the Consent Decree. Moreover, the Department is plainly in danger of not being able to reach and maintain substantial compliance for the two years required before the Consent Decree expires on March 23, 2014. While the Chief of the St. Croix District and the Training Director (among others)⁵³ demonstrated an increased sense of commitment to the Consent Decree compliance process this quarter, we are still waiting for the entire Department's executive leadership team to work cohesively and diligently toward the Consent Decree's goals. In particular, we would like to see the Acting Police Commissioner take a visible and direct role in holding the working group leaders (and the rest of the Department) accountable for coming into compliance with the Consent Decree. In addition, while the Department has put (or is beginning to put) a number of important building blocks into place—including, but not limited to, issuing ten force-related policies and beginning to train on several of them, bringing IAPro into operation in both Districts, and implementing aspects of the citizen complaint process—the VIPD must put all of those pieces together in a more coordinated manner to move closer to substantial compliance. To that end, the working groups should work together more closely. For example, the Training and Use of Force working groups must develop training programs relating to each of the Department's revised force-related policies.

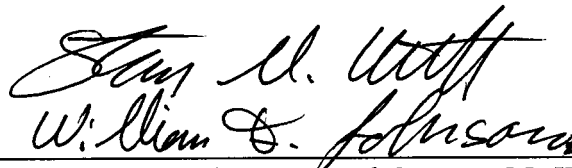
During this Quarter, the OIM was disappointed to learn that important materials (including draft policies and directives) from the Use of Force working group were not disseminated in the St. Thomas District because of certain procedural obstacles. Although the Police Commissioner (or the Assistant Police Commissioner, as his designee) could have quickly resolved the situation, they did not act promptly. As a result, the St. Thomas District lacks these materials, which is particularly unfortunate since the Use of Force working group found that the St. Thomas District lags behind the St. Croix District in conducting adequate use of force investigations. The Acting Police Commissioner must eliminate any obstacles that thwart cooperation and

⁵³ For example, the Director and Assistant Director of IAB, the Compliance Coordinator, and the Training Cadre for St. Croix have long shown a commitment to compliance with the Consent Decree.

communication between the Districts. As we have repeatedly stated, the VIPD—despite being administratively and geographically divided into two Districts—is a single police agency, and it must function as such to satisfy the Consent Decree.

Although we are disappointed to see the Police Commissioner retire, the OIM looks forward to working closely with the Acting Police Commissioner and eventually the new Police Commissioner. In the interim, however, we trust that the Acting Police Commissioner will fully commit himself to the Consent Decree compliance process. Among other things, the Acting Police Commissioner should immediately address: 1) any obstacles that are preventing the working groups (particularly the Use of Force working group) from disseminating Consent Decree-related materials Department-wide; and 2) the current impasse between Property and Procurement and the VIPD relating to several vital training programs.

This is a critical time for the VIPD. Unless the Department rapidly increases its Consent Decree compliance efforts, it is very unlikely that the Department will be able to substantially comply with the Consent Decree within the required five-year time period. Unless extended, the Consent Decree expires on March 23, 2014, which means that the VIPD must achieve substantial compliance by March 23, 2012. Although time is quickly running out, there are still opportunities for the Department to get back on track and satisfy its obligations under the Consent Decree.



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Appendix A

Summary of Consent Decree Requirements

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

I. Use of Force Policies (CD ¶ 31)

A. Requirements

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

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

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

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

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

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

1. Requirements

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

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

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

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

Footnote continued from previous page

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

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

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

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

1. Requirements

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

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

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

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

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

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

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

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

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

1. Requirements

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

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

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

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

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

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

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

opinions regarding the complainant's mental competency or veracity.

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

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

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

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

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

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

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

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

1. Requirements

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

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

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

The VIPD has the option either to purchase the RMS "off the shelf" and customize the system to VIPD's requirements or to develop and

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

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

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

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

⁸ See CD ¶ 66.

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

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

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

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

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

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

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

B. Oversight (CD ¶ 69)

1. Requirements

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

C. Discipline (CD ¶¶ 70-72)

1. Requirements

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

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

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

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

V. Training (CD ¶¶ 73-81)

A. Management Oversight (CD ¶¶ 73-77)

1. Requirements

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

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

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

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

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

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

B. Curriculum (CD ¶¶ 78-81)

1. Requirements

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

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

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

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

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

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

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

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

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

1. Requirements

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

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

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

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