

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF THE VIRGIN ISLANDS

UNITED STATES OF AMERICA,

Plaintiff,

- against -

THE TERRITORY OF THE VIRGIN ISLANDS AND
THE VIRGIN ISLANDS POLICE DEPARTMENT,

Defendants.

3:08-cv-00158-CVG-RM

NOTICE OF FILING

PLEASE TAKE NOTICE that the Independent Monitor for the Virgin Islands Police Department submits the attached Fourth Quarterly Report of 2011 of the Independent Monitor for the Virgin Islands Police Department pursuant to a Consent Decree entered into by the parties in the above-captioned case and filed with this Court.

Dated: New York, New York
March 13, 2012

FRIED, FRANK, HARRIS, SHRIVER
& JACOBSON LLP

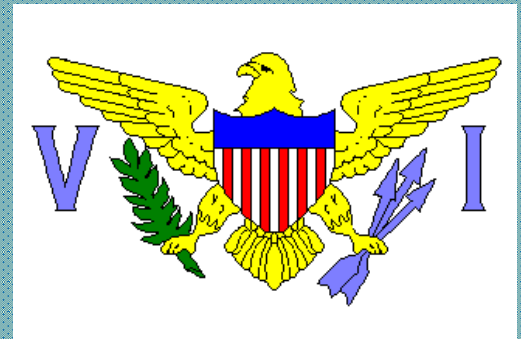
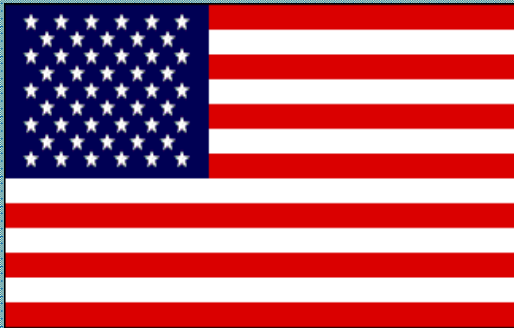
By: s/ Steven M. Witzel

William F. Johnson
Steven M. Witzel

One New York Plaza
New York, New York 10004-1980
Tel.: (212) 859-8000
Fax: (212) 859-4000
william.johnson@friedfrank.com
steven.witzel@friedfrank.com

Independent Monitor

Fourth Quarterly Report of 2011 of the Independent Monitor for the Virgin Islands Police Department



William F. Johnson and Steven M. Witzel
Independent Monitors



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

March 12, 2012

Independent Monitoring Team

Independent Monitors

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

Fried Frank Monitoring Team

Leah C. Aden
Elizabeth P. Kozlowski
Joshua D. Roth

Police Practices Coordinator

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

Police Practices Experts

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

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

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

Table of Contents

	Page
Executive Summary	1
Deadlines for Substantial Compliance Under the Consent Decree	5
Introduction	8
Compliance Assessment	12
I. Use of Force Policies (CD ¶ 31) & Specific Use of Force Policies (CD ¶¶ 39-41)	12
A. Status and Assessment.....	12
B. Recommendations.....	16
II. Evaluation, Documentation, and Review of Uses of Force (CD ¶¶ 32-38)	17
A. Status and Assessment.....	17
1. Policies and Directives	17
2. OIM Survey of Uses of Force	20
B. Recommendations.....	22
III. Citizen Complaint Process (CD ¶¶ 42-58).....	23
A. Public Information (CD ¶¶ 42-43) & Means of Filing and Tracking Complaints (CD ¶¶ 44-45)	23
1. Status and Assessment	23
2. Recommendations	26
B. Investigation of Complaints (CD ¶¶ 46-58)	27
1. Status and Assessment	27
2. Recommendations	28

| William F. Johnson and Steven M. Witzel

IV.	Management and Supervision (CD ¶¶ 59-72)	29
A.	Risk Management System (CD ¶¶ 59-68)	29
1.	Status and Assessment.....	29
2.	Recommendations.....	32
B.	Oversight (CD ¶ 69)	33
1.	Status, Assessment, and Recommendations.....	33
C.	Discipline (CD ¶¶ 70-72)	34
1.	Status, Assessment, and Recommendations.....	34
V.	Training (CD ¶¶ 73-81)	35
A.	Management Oversight (CD ¶¶ 73-77) and Curriculum (CD ¶¶ 78-81).....	35
1.	Status and Assessment.....	35
2.	Recommendations.....	42
VI.	Monitoring, Reporting, and Implementation (CD ¶¶ 82-102)	44
1.	Status, Assessment, and Recommendations.....	44
2.	Status of Substantial Compliance	45
	Conclusion.....	47
	Appendix A Summary of Consent Decree Requirements	i

Executive Summary

This is the Fourth 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 December 31, 2011.¹

During this quarter, the OIM conducted five week-long monitoring trips to the Virgin Islands. OIM representatives spent a significant amount of time during the Fourth Quarter reviewing and commenting on Consent Decree related materials (including, but not limited to, use of force investigatory files, draft policies, and training records), and providing technical assistance to VIPD personnel. In addition to our time “on island” during the quarter, we actively monitored the VIPD’s Consent Decree compliance efforts throughout the quarter. The assessments contained in this Report are primarily based on the OIM’s observations and the Department’s quarterly Status Report, dated January 13, 2012.

As an initial matter, the OIM congratulates Police Commissioner White on receiving legislative confirmation on February 8, 2012. Since being nominated as Police Commissioner on November 7, 2011, the OIM has spoken and met with Police Commissioner White on several occasions. During those interactions, and in his public statements, Police Commissioner White has steadfastly expressed his commitment to the Consent Decree compliance process. The OIM recognizes and appreciates Police Commissioner White’s focus on the Consent Decree, and we look forward to continuing to work together.

For the past several quarters, the OIM has warned the VIPD that it was in danger of not being able to substantially comply with the Consent Decree (and remain in substantial compliance for two years) before the Consent Decree expires on March 23, 2014.² Unfortunately, it is now clear that the VIPD will not satisfy most of its obligations under the Consent Decree in a timely manner.³

As we have previously reported, the VIPD has already missed every deadline established by the Court-ordered Consent Decree Timetable

¹ This Report references a limited number of events that occurred after December 31, 2011 to provide context for significant efforts that the VIPD made outside of the quarter to satisfy its Consent Decree obligations.

² OIM Third Quarterly Report of 2011 at XVIII, 44.

³ Consent Decree (“CD”) ¶ 103.

2 | William F. Johnson and Steven M. Witzel

relating to substantial compliance (deadlines that the VIPD proposed and committed to meeting).⁴ For example, under the Consent Decree Timetable, the VIPD was required to substantially comply with Consent Decree ¶¶ 32-58, 70, and 72 by May 31, 2011, ¶¶ 60, 61, and 73-81 by June 30, 2011, and ¶¶ 49, 59, 63-66 by September 15, 2011. At the end of the Fourth Quarter, the VIPD has only complied with ¶¶ 82-86, 88 and 98 (a chart summarizing the VIPD's progress toward substantial compliance is located at the end of this Executive Summary).

To be sure, the VIPD has made significant strides in certain areas, including, but not limited to, policy development and the introduction of a citizen complaint process. However, it has been unable to gain traction on many other aspects of the Consent Decree. One of the biggest challenges facing the VIPD relates to the implementation of its revised force-related policies. While the VIPD purports to have completed "more than 98% of the policies and more than 50% of the training [relating to those policies]," it has not yet successfully implemented a single force-related policy.⁵ In order to "implement" a policy under the Consent Decree, the VIPD must: (1) provide adequate training (including follow-up Roll Call and Commanders Call training) to relevant personnel; (2) ensure that relevant personnel are proficient on each policy (immediately following the completion of training and on a periodic basis thereafter); and (3) monitor compliance with each policy, providing remedial training and/or imposing sanctions for non-compliance as necessary. Until the VIPD undertakes these steps, it will not be in compliance with these portions of the Consent Decree.

The VIPD and the Virgin Islands Office of the Attorney General (the "VIAG") have previously complained that the standards for substantial compliance have not been adequately defined. On November 1, 2011, the OIM sent the VIPD, VIAG and the Department of Justice (the "DOJ") its proposed Substantial Compliance Thresholds Chart (the "Chart"). Despite repeated attempts by the OIM to discuss the metrics for substantial compliance, the VIPD and VIAG did not respond with any specific revisions to the Chart or the OIM's requests to further discuss the Chart during the Fourth Quarter of 2011.

The VIPD's limited training capacity has seriously hindered the Department's ability to adequately implement its revised force-related

⁴ OIM Third Quarterly Report of 2011 at XXI-XXIV.

⁵ On January 20, 2012, the VIPD issued a press release in response to the OIM's Third Quarterly Report of 2011 challenging some of the OIM's assessments.

policies. During the past two quarters, the Training Division has repeatedly cancelled or postponed important training programs by outside vendors because of a bureaucratic impasse between the VIPD and the Department of Property and Procurement (which is responsible for approving contracts with outside vendors). In fact, during the Third Quarter, the Training Division expressed concern that the VIPD had harmed its relationship with some potential vendors because of these cancellations and postponements. In response, the VIPD proposed an alternative procedure for engaging outside vendors that involves the Department's Policy Consultant. The OIM is hopeful that the VIPD will develop a process that will allow important training to proceed on a timelier basis. This issue, however, highlights the Department's need for a more robust internal training infrastructure. While outside vendors may need to teach certain training programs (e.g., train-the-trainer recertification), most of the Department's routine training should be taught by competent VIPD personnel who are proficient in the VIPD's policies and procedures. As we have repeatedly stated, the VIPD is too reliant on outside training vendors. The OIM expects the new Director of Training (who was appointed on December 28, 2011) to focus on strengthening the Department's internal training infrastructure.

The Department's dearth of Supervisors is also undermining its ability to comply with the Consent Decree. In fact, at the end of the Third Quarter, 10 additional VIPD Supervisors (in the ranks of Corporal, Sergeant, Lieutenant and Captain) retired, further depleting the Department's limited number of Supervisors. As we have repeatedly emphasized, Supervisors play a key role under the Consent Decree. Among other things, Supervisors are responsible for investigating use of force events, helping to train more junior Officers, and supervising the Officers under their command. While the VIPD received approval during the Third Quarter to start promoting personnel to supervisory positions, that process stalled during the Fourth Quarter because of fiscal restraints. The OIM recognizes that the current economic downturn has hit the Virgin Islands hard. However, until the VIPD and the Territory of the Virgin Islands (the "Virgin Islands") (which are both parties to the Consent Decree) devote sufficient resources to satisfying their obligations under the Consent Decree, the Department will continue to remain out of compliance.

Finally, the OIM is concerned that the Consent Decree working groups—which were formed in January 2011 to hasten the Department's Consent Decree compliance efforts—were less active during the Fourth Quarter than in prior quarters. The OIM believes that the current slow down may be attributable to a lack of leadership and direct involvement

4 | William F. Johnson and Steven M. Witzel

by the working group leaders. Unfortunately, the working group leaders have assigned most of their responsibilities to subordinate personnel, including their respective “point persons.” At a minimum, each working group leader should set the agenda for his working group, regularly participate in working group meetings, and liase with the other working groups on overlapping issues. During a meeting with the OIM at the end of the Fourth Quarter, the Police Commissioner voiced his support for the working groups. To make the working groups more effective, we encourage the Police Commissioner to hold the working group leaders firmly accountable for the progress of their respective working groups.

While a tremendous amount of hard work still awaits the VIPD, the OIM continues to believe that, with the right leadership and commitment, the Department has the capacity to comply with the Consent Decree. The Department, however, must not carry on at its current pace. To that end, we encourage the Police Commissioner to hold every member of the Department (particularly the executive leadership team, including the Assistant Commissioner, Chiefs, and Deputy Chiefs) accountable for making progress on the Consent Decree. The OIM recommends that the VIPD hold another summit with the Department’s executive leadership team to discuss the status of Consent Decree compliance, and to develop a concrete plan for achieving compliance in 2012. The OIM stands ready to assist the Department with this effort by providing suggestions and/or attending the summit. The VIPD entered into the Consent Decree nearly three years ago. The time has clearly come for the entire Department to fully commit to complying with the Consent Decree as soon as possible.

Deadlines for Substantial Compliance Under the Consent Decree

The substantial compliance deadlines refer to the dates established by the Consent Decree Timetable that the Virgin Islands, VIPD, and 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	Status of Compliance as of December 31, 2011 Noncompliance/ Substantial Compliance
31	Use of Force Policies: Use of Force; Vehicle Pursuit; O.C. Spray; Impact Weapons; Spike Strip; Canine; SRT & Hostage Policy; Sniper; FTO; Security Rings; Investigation and Review of Use of Force; Use of Force Review Board; Post Shooting Incident Procedures; Officer Involved Shooting Investigation Procedures.	Within 30 days of DOJ final written approval	Noncompliance – While the VIPD issued the Use of Force Policy, Vehicle Pursuit Policy, O.C. Spray, Impact Weapons and Spike Strip Policy on March 30, 2011, the Field Training and Evaluation Program Policy on September 21, and the Security Rings Directive on October 20, it has not implemented these policies. ¹ In addition, the VIPD has not yet issued the SRT & Hostage Policy, Sniper, Investigation and Review of Use of Force, Use of Force Review Board, Post Shooting Incident Procedures, and Officer Involved Shooting Investigation Procedures policies. The VIPD is also revising the Canine Policy that it issued on May 3, 2011.
32-38	Evaluation, Documentation, & Review of Use of Force	May 31, 2011	Noncompliance – While the VIPD issued the Reportable Use of Force Policy on March

¹ 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.

6 | William F. Johnson and Steven M. Witzel

CD	Description	Deadlines for Substantial Compliance Under the Consent Decree	Status of Compliance as of December 31, 2011 Noncompliance/ Substantial Compliance
	Reportable Use of Force Policy		30, 2011, it has not implemented the policy. In addition, the VIPD has not satisfied the Consent Decree requirement that it evaluate, document, and review <i>all</i> uses of force.
39	Evaluation, Documentation, & Review of Use of Force Firearms Policy	May 31, 2011	Noncompliance – While the VIPD issued the Firearms Policy on May 3, 2011, it has not implemented the policy.
40	Evaluation, Documentation, & Review of Use of Force Off-Duty Official Action	May 31, 2011	Noncompliance – While the VIPD issued the Off-Duty Official Action Policy on March 30, 2011, it has not implemented the policy.
41	Evaluation, Documentation, & Review of Use of Force Intermediate Force Device(s)	May 31, 2011	Noncompliance – While the VIPD issued the ECW Policy on March 30, 2011, it has not implemented this policy.
42-45	Citizen Complaint Process Public Information & Means of Filing and Tracking Complaints	May 31, 2011	Noncompliance – While the VIPD issued the Acceptance of Citizens Complaint Policy on August 2, 2011 and has made complaint forms and informational materials available at appropriate government properties, it has not demonstrated that VIPD personnel are proficient in the policy, or, for example, translated complaint materials in the required languages, assessed if Officers are informing citizens of their right to make complaints, and resolved each complaint in writing.
46-58	Citizen Complaint	May 31, 2011, except	Noncompliance – While the VIPD issued the Investigating

Office of the Independent Monitor | 7

CD	Description	Deadlines for Substantial Compliance Under the Consent Decree	Status of Compliance as of December 31, 2011 Noncompliance/ Substantial Compliance
	Process Investigation of Complaints	September 15 for ¶ 49	Misconduct and Citizen Complaint Policy, it has not implemented this policy.
59-68	Management and Supervision Risk Management System Blue Team Protocol Behavioral Health Services Policy; Psychological Fitness for Duty Evaluation Policy; Officer Peer Support Policy	September 15, 2011, except June 30, 2011 for ¶¶ 60-61 & May 31, 2011 for ¶ 62; also ¶¶ 67-68 have no date.	Noncompliance
69	Management and Supervision Oversight	September 15, 2011	Noncompliance
70-72	Management and Supervision Discipline	May 31, 2011	Noncompliance
73-77	Training Management Oversight	June 30, 2011	Noncompliance
78-81	Training Curriculum	June 30, 2011	Noncompliance

Introduction

This is the Fourth 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 December 31, 2011.¹

The OIM was established in January 2010² to monitor compliance by 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 between the Virgin Islands, the VIPD, and the United States Department of Justice (the “DOJ”) (collectively, the “Parties”) to resolve a lawsuit brought by the United States alleging that the Virgin Islands and the VIPD violated 42 U.S.C. § 14141 by engaging “in a pattern or practice of excessive force by

¹ This Report references a limited number of events that occurred after December 31, 2011 to provide context and shed light on significant efforts that the VIPD made outside of the quarter to satisfy its Consent Decree obligations. The OIM makes best efforts to publish each Quarterly Report as quickly as possible. The OIM’s publication date for each Quarterly Report depends on a timeline agreed to by the VIPD, the Territory of the Virgin Islands (the “Virgin Islands”) and the Department of Justice (the “DOJ”) (collectively, the “Parties”). For example, the VIPD has 7 days after the end of the quarter to provide the OIM with a quarterly Status Report detailing its efforts to satisfy the Consent Decree during the prior quarter. In addition, under ¶ 96 of the Consent Decree, the OIM is required to provide the Parties with 10 business days to review a draft of each Quarterly Report. Once the OIM receives comments from the Parties, additional time is required before publishing to consider the comments and to incorporate as appropriate.

² After an initial procurement process, the Virgin Islands and the VIPD contracted for the services of a monitoring team led by Michael R. Bromwich, a partner in the Washington, D.C. office of Fried, Frank, Harris, Shriver & Jacobson LLP (“Fried Frank”). In 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/VIindex.html>.

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, or immunities secured or protected by the Constitution or the laws of the United States.”⁵ The 104 paragraph Consent Decree contains a broad range of substantive requirements for reform in areas such as:

(1) revising the VIPD’s force-related policies; (2) training Officers to properly use force in accordance with constitutional requirements, VIPD policy, and existing best practices in policing; (3) reporting and investigating use of force events; (4) documenting and investigating complaints alleging Officer misconduct; (5) developing systems for managing and supervising Officers; and (6) disciplining Officers found to have engaged in misconduct.

On October 1, 2010, the Court—charged with enforcing the VIPD’s obligations under the Consent Decree—ordered the Parties to jointly propose a timetable by which the VIPD would substantially comply with each substantive provision in the Consent Decree. The Court was concerned about the VIPD’s slow rate of progress and saw the timetable as a vehicle to help the Department move forward more quickly. The Parties subsequently filed a timetable on November 24, 2010 which set forth specific dates by which the VIPD would substantially comply with each substantive provision in the Consent Decree (the “Consent Decree Timetable”). The Consent Decree Timetable also created interim deadlines, requiring that the VIPD submit force-related policies to the DOJ for approval. The VIPD successfully met nearly every policy submission deadline. However, at the end of the Third Quarter of 2011, the VIPD had missed the deadline for substantially complying with every paragraph identified in the Consent Decree Timetable.

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

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. 2008).

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

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 and Supervision (Deputy Chief of St. Thomas), and Training (Director of Training). The Police Commissioner explained that each working group leader was responsible for: (1) designating a “point person” and recruiting other working group members; (2) drafting an action plan; (3) interacting with other VIPD personnel on interrelated Consent Decree issues; and (4) monitoring the working group’s progress by attending and participating in as many meetings as schedules permit, but no less than twice a month.⁷

On November 7, 2011 Governor de Jongh nominated Henry White Jr. to serve as the new Police Commissioner, pending Senate confirmation. The Virgin Islands Senate subsequently confirmed Mr. White’s appointment as Police Commissioner on February 8, 2012. During the Fourth Quarter, the OIM spoke and met with the Police Commissioner on several occasions. At each meeting, and in his public comments, the Police Commissioner affirmed his commitment to making the Consent Decree a top priority. On December 28, 2011, the Police Commissioner appointed the Consent Decree Manager as the new Director of Training. The Director of Training will continue to serve as the Consent Decree Manager and Head of the Audit Team.⁸ The OIM looks forward to further strengthening our working relationship with the Police Commissioner and Director of Training.

The next section of this Report—the Compliance Assessment section—details the OIM’s findings and observations based on monitoring activities during the Fourth Quarter. This section covers the five main sections of the Consent Decree: (1) Use of Force Policies and Specific Use of Force Policies; (2) Evaluation, Documentation, and Review of Uses of

Footnote continued from previous page

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

⁷ 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.

⁸ In light of the Training Director’s significant responsibilities to the Training Division and Training working group, the OIM respectfully suggests that the Police Commissioner consider whether the Training Director can adequately serve as the Consent Decree Manager and Head of the Audit team at the same time.

Force; (3) Citizen Complaint Process; (4) Management and Supervision; and (5) Training. In light of the vital role that the working groups play in the Department's Consent Decree compliance efforts, the Compliance Assessment section also provides a detailed update about the progress of each working group. Finally, the Compliance Assessment includes recommended next-steps relating to each provision in the Consent Decree.

Compliance Assessment

This section of the Report describes the VIPD's compliance efforts with respect to each of the substantive provisions of the Consent Decree,⁹ as well as the OIM's monitoring activities during the quarter. The organization of this section of the Report parallels the organization of the Consent Decree. Specifically, we provide a *status and assessment* discussion that describes and analyzes the VIPD's progress toward achieving substantial compliance with the Consent Decree's requirements.¹⁰ As part of this discussion, we provide an update about the progress of each of the working groups leading these efforts. We also include *recommendations* to assist the VIPD in achieving full and timely implementation of the Consent Decree's requirements.¹¹ A chart summarizing the VIPD's progress towards substantial compliance is included at the end of the Executive Summary.

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

A. Status and Assessment

The Chief of the St. Croix District leads the Use of Force working group, and has appointed Department personnel from both Districts to his working group. The Use of Force working group has met infrequently since being formed in January 2011. For example, during the Fourth Quarter, the Use of Force working group appears to have met twice—on November 29, 2011 and December 9, 2011—based on meeting minutes provided to the OIM. In order to make faster progress, the Use of Force working group should strive to meet more regularly in the future. To the extent that the Use of Force working group (or any other working group) held additional meetings during the Fourth Quarter, it is the VIPD's responsibility to provide the OIM with the minutes for those meetings (along with any other supporting documentation, including, but not limited to, agendas, sign-in/attendance sheets, and handouts). As we have repeatedly emphasized, it is in the VIPD's interest to provide the

⁹ 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.

¹⁰ 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.

¹¹ CD ¶ 85.

OIM with as much information about the Department's Consent Decree compliance efforts as possible.

One of the initial tasks assigned to each working group was to develop an action plan. Among other things, action plans are intended to: (1) identify all Consent Decree provisions for which the working group is responsible; (2) describe the tasks that must be completed to satisfy each Consent Decree provision; (3) assign tasks to specific individuals; and (4) set short, mid, and long-term deadlines to achieve compliance with the deadlines set forth in the Consent Decree Timetable. The Use of Force working group developed a preliminary draft action plan during the Second Quarter. At the end of the Fourth Quarter, however, the OIM had not yet seen a revised version of that action plan.

The VIPD has made strides by revising and obtaining DOJ approval for many of its force-related policies. For example, the VIPD issued a total of ten force-related policies through the end of the Fourth Quarter: (1) Use of Force; (2) Reportable Use of Force; (3) Impact Weapons; (4) Electronic Control Weapon ("ECW");¹² (5) O.C. Spray; (6) Vehicle Pursuit; (7) Spike Strip; (8) Off-Duty Official Action; (9) Firearms; and (10) Field Training Officer Program ("FTO"). 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. As discussed more fully below, the Use of Force working group and the Policy and Procedures Committee (the "Committee") have also continued to work on and review the Response to Resistance Investigation Checklist that will be used by Supervisors when conducting use of force investigations.

The Committee is also currently working on several other policies and directives. On October 20, 2011, the Department issued the Security Ring Directive, which requires VIPD personnel to secure prisoners with security rings when a holding cell is not available or when there are multiple prisoners being held simultaneously in the same cell. Before the Security Ring Directive, VIPD personnel had much greater discretion in determining when to utilize security rings, potentially resulting in different practices in each Zone.

¹² The TASER is one example of an ECW. The VIPD reports that the Department received 200 additional TASERs during the Fourth Quarter that will be distributed to Officers in the St. Thomas/St. John District who successfully completed TASER training. TASERs have already been distributed to qualified Officers in the St. Croix District.

Additionally, on November 3, 2011, the VIPD received conditional approval from the DOJ on the Reporting, Investigation and Review Use of Force Policy. The policy is intended to address concerns among some VIPD personnel that the existing Use of Force Policy imposes too great a burden on Supervisors by requiring “all inclusive” force reviews for comparatively “minor” force incidents. Under the new policy, the VIPD will be permitted to investigate use of force events in proportion to the type of force used, meaning that comparatively “minor” force events would typically require less exhaustive investigations than more severe force events. To that end, the policy creates four separate use of force levels (measured on a scale from 1 to 4, with 1 being the most severe), and dictates what Supervisors must do to investigate use of force events at each level. Before the policy can go into effect, the Parties must modify the Consent Decree (with Court approval) to permit a tiered approach to use of force investigations. The VIPD submitted its proposed modifications to the DOJ on October 31, 2011, and the DOJ responded early in the First Quarter of 2012. The OIM encourages the Parties to reach an agreement and submit the proposed modification to the Court for approval as soon as possible.

As an interim measure, the Chief of the St. Croix District, as the leader of the Use of Force working group, wrote to the Police Commissioner during the Fourth Quarter to propose a directive based on the Reporting, Investigation and Review Use of Force Policy. According to the Chief, such a directive would help to “ensure prompt compliance in the St. Thomas [D]istrict [and] decrease the use of force workload currently being absorbed within the St. Croix District.” To the OIM’s knowledge, the Chief never received a response from the Police Commissioner. As stated above, the Parties should seek Court approval to modify the Consent Decree as soon as possible. However, to the extent that such approval is delayed, the Police Commissioner should consider such a directive as an interim solution.

Also during the Fourth Quarter, the VIPD received technical assistance and approval from the DOJ on its Special Operations – Special Response Team (“SRT”) and Hostage Negotiations Team Policy, and its Special Operations SRT – Sniper Policy. The OIM expects the VIPD to formally issue both policies during the next quarter, and to immediately start training on them.

The Department previously identified the need for several additional force-related policies, which the Department began drafting during the Third Quarter, including the: (1) Canine Policy; (2) Use of Force Review Board Policy; (3) Arrest Policy; (4) Post Shooting Incident

and Procedures Policy; and (5) Officer Involved Shooting Investigating Procedures.¹³ The VIPD reports that it submitted the Use of Force Review Board Policy—which would create a forum for senior VIPD personnel to review certain use of force events—to its Policy Consultant for review during the Fourth Quarter. The Department did not, however, provide an update on those other policies during the Fourth Quarter.

For example, the OIM expected, but did not receive, an update on the Department's Canine Policy, which was being updated to reflect the appropriate training that canines should receive.¹⁴ Similarly, the OIM previously encouraged the Use of Force working group to develop an Arrest Policy to address our concern that some Officers were arresting and subsequently releasing individuals without adequately documenting the arrest and/or whether any force was used.¹⁵ Until the Department finalizes and provides adequate training on such a policy, it will continue to underreport arrests and use of force events. Consequently, it will not be able to comply with the Consent Decree until it rectifies this problem. The underreporting of arrests and uses of force also has a negative impact on the Department's Risk Management System ("RMS") (see *infra* Section IV. Management and Supervision).

Finally, the VIPD reports that it is waiting for the OIM to provide comments on several draft policies.¹⁶ While we welcome the opportunity to comment on "near final" versions of draft policies, we have repeatedly told the VIPD that we will not review preliminary drafts. Generally, the OIM will consider a policy to be "near final" once it has been reviewed by the Committee and Policy Consultant (if the VIPD elects to submit a draft to the Policy Consultant), and revised based on their feedback. As such,

¹³ To the extent the VIPD develops additional force-related policies beyond those that are currently under development or required by the Consent Decree, the subsequent issuance and implementation of those policies will not restart the two-year substantial compliance period.

¹⁴ The VIPD initially issued the Canine Policy on May 3, 2011. As the OIM previously advised, once the Department finalizes its revisions, it must resubmit the revised Canine Policy to the DOJ for review and approval.

¹⁵ OIM First Quarterly Report of 2011 at 8. At a minimum, the OIM suggested that the Arrest Policy: (i) delineate the differences between an investigative detention and an arrest; (ii) outline the steps that VIPD personnel must follow if they arrest an individual, but later determine that they do not have an adequate basis for the arrest; (iii) require that all Officers, including special unit Officers (e.g., canine and Special Operations), who assist in the arrest be identified in the arrest report and/or Form 1-A; (iv) emphasize the need for VIPD personnel to complete an RRR (in addition to a Form 1-A or arrest report) whenever force is used; and (v) ensure supervisory oversight over the decision to release an arrestee.

¹⁶ VIPD Status Report issued January 13, 2012 at 3.

the VIPD should substantially revise these policies before seeking our comments. Also, to avoid any miscommunications going forward, the VIPD should follow-up with the OIM on any open issues, rather than simply wait for a response from the OIM (as the VIPD did in this instance).

At the end of the Fourth Quarter, the VIPD is not in substantial compliance with the Consent Decree provisions pertaining to force-related policies: ¶¶ 31 and 39-41. To achieve substantial compliance, the VIPD must finalize and implement its outstanding force-related policies. For certain policies, such as the Off-Duty Official Action Policy (which was approved by the DOJ in March 2011), the Department has not yet provided the corresponding training. Providing training on the Department's force-related policies should be a top priority for the VIPD. Moreover, once the Department provides training on a particular policy, it should ensure that VIPD personnel understand their obligations and are meeting them. The Department should document these efforts and report on them in its next quarterly Status Report.

B. Recommendations

As an initial step, the Use of Force working group should begin meeting more regularly. The Use of Force working group should document each meeting, and that documentation should be provided to the OIM on a periodic basis. Additionally, the Use of Force working group should update its preliminary action plan to reflect its current objectives.

The Use of Force working group should also continue to work with the Committee to develop and/or finalize all outstanding force-related policies, including the: (1) Canine Policy; (2) Use of Force Review Board Policy; (3) Arrest Policy; (4) Post Shooting Incident and Procedures Policy; and (5) Officer Involved Shooting Investigating Procedures. While those policies are being finalized, the Use of Force working group should coordinate with the Director of Training to develop corresponding training programs so that each policy can be implemented immediately following the DOJ's approval.

Similarly, the Use of Force working group should work with the Training Division to ensure that training programs are being held for all of the Department's revised force-related policies. As discussed below (see *infra* Section V. Training), the Department has not yet provided any training on the Vehicle Pursuit Policy, the Off-Duty Official Action Policy, or the Firearms Policy, all of which were issued more than six months ago.

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

A. Status and Assessment

1. Policies and Directives

The Use of Force working group has shown initiative by auditing completed force investigations from the Zones in both Districts. The Use of Force working group initially conducted such an audit in June 2011. During the Fourth Quarter, the Use of Force working group reports that it began planning another audit of completed force investigations in the St. Thomas District. The planned audit will allow the Use of Force working group to evaluate the extent to which the Department (at least in the St. Thomas District) has improved its use of force reporting and investigatory practices since the last audit. The OIM encourages the Use of Force working group to document the results of its audit, and to share its findings with the OIM. Among other things, we suggest that the Use of Force working group examine whether: (1) Officers are completing RRRs (rather than using the old form); (2) Supervisors are conducting adequate use of force investigations; (3) the Chief is reviewing investigations, correcting deficiencies, and forwarding closed cases to the Internal Affairs Bureau (for review and archiving); (4) the investigations are completed within the time periods prescribed in the Reportable Use of Force Policy.¹⁷ The Use of Force working group should conduct a similar audit on St. Croix.

Through the end of the Fourth Quarter, the Use of Force working group has limited its use of force audits to units under the purview of the Chiefs. A significant number of VIPD personnel, however, are assigned to units under the purview of the Police Commissioner, including, but not limited to, the Intelligence Unit, the Bureau of Insular Investigations, and the High Intensity Drug Trafficking Areas task force. As such, the Use of Force working group's audits (while helpful) have omitted important areas of review. To address this issue, the Use of Force working group sent a memorandum to former Police Commissioner

¹⁷ The Reportable Use of Force Policy requires that the investigating supervisor sign and date an investigation report and forward the completed case file to the Commander within ten calendar days from the date of the incident. The Commander must submit findings and conclusions to the Deputy Chief/Chief within five working days after receiving the case file, and the Deputy Chief/Chief has five working days to submit a copy of his or her findings and a copy of the case file to IAB. The OIM notes that the Reporting, Investigation and Review of Use of Force Policy conditionally approved by the DOJ includes similar timelines.

Novelle Francis on July 1, 2011 seeking permission to audit use of force practices across the entire Department. To the best of the OIM's knowledge, former Police Commissioner Francis never responded. We request that the Police Commissioner grant the Use of Force working group's request promptly. In addition, the OIM suggests that the Use of Force working group coordinate with the Audit Team when conducting any audits.

During the Third Quarter, the Use of Force working group conducted an audit of the K-9 Unit on St. Croix. The audit discovered two issues with the canines: (1) they did not "stand off/recall" (return to handler during apprehension); nor (2) "revere" (circle and bark at a subject). Based on that audit, the Chief of the St. Croix District directed the K-9 Special Operations Commander to train the canines in these two areas and prohibit their deployment until the canines received certification that they mastered those skills. During the Fourth Quarter, the Chief of St. Croix reported that 6 Officers and their canines demonstrated proficiency in "stand off/recall" and received certification; the OIM has not received any information relating to revere. While the VIPD had previously indicated that a similar audit would take place on St. Thomas during the Fourth Quarter, the Use of Force working group reports that such an audit is still pending.

With respect to use of force reporting, the VIPD reports that some Officers in both Districts continue to use the old use of force reports, rather than the RRRs, to record use of force events. Because the Reportable Use of Force Policy (and corresponding training) is based on the RRR, the Department should stop using the old use of force reports immediately. Moreover, because the RRRs are different than the old use of force reports, using both forms has caused unnecessary confusion. For example, while the old use of force reports inquired about property damage (in connection with a use of force), the RRRs do not. Although the VIPD has already held training on the Use of Force Policy and the Reportable Use of Force Policy, these deficiencies underscore the need for the Department to reinforce the requirements of these policies in further in-service training, and Roll Call and Commanders Call training.

In addition, at the beginning of the Fourth Quarter the now-former Director of Training told the OIM that the Chiefs were not consistently providing the Training Division with completed RRRs as required by the Reportable Use of Force Policy. This requirement exists to provide the Training Division with the opportunity to identify force-related training

deficiencies based on the facts provided in the RRRs.¹⁸ The OIM urges the Chiefs to ensure that their subordinates provide completed RRRs to IAB and the Training Division. Once the Training Division begins receiving completed RRRs more consistently, it should develop a procedure for reviewing them.

Department records indicate that 69% of use of force investigations initiated in 2011 in both Districts were incomplete by December 31, 2011. Specifically, in the St. Thomas District only 7 out of 49 of the investigations were completed with the following dispositions: 3 use of force incidents were determined to be justified, but in violation of policy; 1 use of force incident was determined to be justified, but that the officer required remedial training; and 3 use of force incidents were found justified and within policy. Of the remaining 42 use of force investigations awaiting final disposition, 30 were more than 60 days over due.

In the St. Croix District, 33 out of 79 use of force investigations initiated during 2011 were completed with the following dispositions: 1 use of force incident was determined to be justified, but in violation of policy; 1 use of force investigation was not sustained; 1 use of force incident was suspended by the Chief; 1 use of force incident did not provide a final disposition; and 29 use of force incidents were determined to be justified and within policy. Of the remaining 46 use of force investigations awaiting final disposition, 27 were more than 60 days over due.

To facilitate greater uniformity in the Department's use of force reporting and investigatory practices, the Use of Force working group (with assistance from the Committee) continued to revise the Response to Resistance Investigation Checklist. As we have previously reported, the checklist is designed to help Supervisors (and Chiefs/Deputy Chiefs) determine whether RRRs are complete, and whether additional information and/or investigative steps are required. The checklist directs Supervisors to ensure that VIPD personnel are, among other things, recording use of force events with Central Dispatch, and completing arrest and/or Form 1-As, as necessary. During the Fourth Quarter, the OIM received a revised version of the checklist reflecting comments from the Committee and the OIM based on the VIPD's proposed tiered approach to reviewing use of force events. Supervisors in

¹⁸ The Reportable Use of Force Policy requires Commanders to forward a copy of the completed RRR to the Director of Training within two business days.

the St. Croix District began using the checklist during the Third Quarter 2011. At the end of the Fourth Quarter, Supervisors in the St. Thomas District had not yet started using the checklist. Pending distribution of a Department-wide checklist, the OIM encourages the Chief of the St. Thomas District to issue a directive adopting the checklist for Supervisors in his District.

2. OIM Survey of Uses of Force

During the Fourth Quarter, the OIM continued to evaluate the Department's use of force reporting practices to determine, among other things, whether investigation files contained all of the documentation required by the Consent Decree. A "complete" investigation file generally consists of the following (to the extent applicable): Form 1-A; Arrest Report; completed RRR; video or audio statements from witnesses; photos of injuries, weapons, etc.; the Supervisor's investigative report with an analysis of the facts, evidence identified, and findings; evidence that the Department's chain of command reviewed and approved the completed investigation file; and a disposition letter.

Specifically, the OIM reviewed closed force investigations at the Zones and IAB. The OIM noted some improvements, but also some recurring deficiencies. While we noted an improvement in the quality of use of force investigations conducted by the Zones, much of that is due to the Director of IAB's practice of returning incomplete files/inadequate investigations to the Zones for follow-up. Among other things, the Director of IAB noted the following deficiencies during the Fourth Quarter: (1) Supervisors and Chiefs/Deputy Chiefs were sustaining (approving) uses of force where no RRR was completed; (2) Supervisors and Chiefs/Deputy Chiefs failed to identify inconsistencies, such as conflicting case numbers, among the documents in the file; (3) case files did not include statements from all involved VIPD personnel and witnesses (including the subject of the force); and (4) case files did not identify training deficiencies to be remedied. In addition, the OIM has independently observed that a number of case files did not reflect any discussion of the use of force continuum or de-escalation techniques.

The OIM also found that Officers in both Districts repeatedly failed to notify their Supervisors immediately (or as soon thereafter as practicable) after using force and failed to complete RRRs. For example, three days after a use of force event on St. Thomas, a Commander conducting the corresponding investigation sent a letter to the Supervisor who was on-duty at the time of the incident questioning: (1) why he did not respond to the incident when the call was reported over the radio; and (2) why he did not ensure that the involved Officers

promptly completed RRRs. The file included a Letter of Reprimand from the Commander to the on-duty Supervisor admonishing him for his failure to provide adequate supervision. Also in the file were Letters of Caution to the involved Officers informing them that their use of force was justified, but that they violated the Use of Force Policy and Reportable Use of Force Policy by not filing RRRs within the prescribed time period. The involved Officers ultimately filed use of force reports (rather than the required RRRs), but they back-dated the form to reflect the date of incident. The VIPD should prohibit the practice of back-dating forms because it masks non-compliance with the Reportable Use of Force Policy.

During the Fourth Quarter, the OIM found that Supervisors' force investigations routinely failed to document witness canvasses or include an assessment of whether the force used was appropriate. For example, in one case on St. Thomas, force was used to restrain a mentally disturbed person. The file indicates that witnesses, including family and medical respondents, were present, but does not include any documentation indicating that statements were taken from those individuals. Similarly, when Supervisors concluded that remedial action was warranted, the files seldom included documentation about the remedial action taken. To address these defects, the Department has tentatively scheduled training for Supervisors on how to investigate use of force incidents for February or March 2012.

The OIM also audited Arrest Reports filed in the St. Thomas District between September and December 2011 to monitor whether VIPD personnel are completing RRRs whenever force is used. The OIM discovered that, with some exceptions, VIPD personnel are filing RRRs with greater regularity than in prior quarters. For example, based on the Arrest Reports referenced above, the OIM identified 15 cases in which the Officer's narrative indicated that force may have been used. To determine whether force was in fact used, the OIM then tracked each case by searching for the corresponding Form 1-A and searching IAPro. Out of the 15 cases where force may have been used, the OIM found the following:

OIM Audit of Arrest Reports for the St. Thomas District	
Total Number of Arrest Reports identified for further follow-up	15
• Number of cases where use of force was not likely	7
• Number of cases with corresponding RRRs	3

<ul style="list-style-type: none"> Number of arrests made by law enforcement personnel from another agency 	1
<ul style="list-style-type: none"> Number of cases for which IAB initiated an administrative investigation for failure to report a use of force incident 	1
<ul style="list-style-type: none"> Number of cases identified for further follow-up to track whether force was in fact used and whether a use of force investigation has been completed 	3

B. Recommendations

Because the Use of Force Policy and Reportable Use of Force Policy are foundational components of the Department's Consent Decree compliance infrastructure, the VIPD should continue to reinforce the requirements of both policies through regular in-service training programs.¹⁹ The Chiefs and Deputy Chiefs should regularly review a sample of Form 1-As and Arrest Reports to ensure that: (1) their subordinates are completing RRRs whenever force is used; and (2) Supervisors are conducting adequate investigations. To ensure uniformity in Supervisor investigations across both Districts, the Use of Force working group and the Committee should finalize the Response to Resistance Checklist. Once the checklist is finalized, the OIM encourages the Police Commissioner to require its use in both Districts.

As we have repeatedly stressed, Supervisors play a critical role in investigating use of force events under the Consent Decree. However, based on our observations, it is clear that the VIPD does not have an adequate number of Supervisors to satisfy its Consent Decree obligations. The OIM is encouraged by the fact that the VIPD took an initial step to address this deficiency during the Fourth Quarter by offering management and supervision training to personnel who are scheduled to be promoted. The VIPD should continue to train Supervisors since one session is not enough, and proceed with planned promotions as soon as possible.

¹⁹ This report makes the distinction between "in-service" training and "Roll Call" or "Commanders Call" training. In-service training is typically more extensive and requires VIPD personnel to attend training in lieu of their usual duties. Roll Call or Commanders Call training generally focus on providing refresher training on topics already covered during in-service training and are held during regular shifts.

We also encourage the Use of Force working group and Director of IAB (or his designee) to continue auditing use of force files (and misconduct allegations) in both Districts in order to identify and remedy any issues.²⁰ The Use of Force working group should ensure that: (1) personnel are completing RRRs whenever reportable force is used based on the working group's review of Form 1-As and Arrest Reports; (2) Supervisors and Commanders forward copies of RRRs to the Chiefs' Offices, IAB and the Training Division on both Districts as instructed in the Reportable use of Force Policy; (3) personnel involved in force incidents are not investigating and reviewing those incidents; and (4) personnel are trained on the preponderance of the evidence standard and evaluating witness credibility. As always, the Use of Force working group should document all of these efforts. The OIM also encourages the Use of Force working group to periodically review information that the Director of IAB compiles from IAPro to identify emerging trends and areas in need of remediation.

Although the Department has made progress by issuing and training 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 because it is not adequately evaluating, documenting, and reviewing uses of force. For example, as discussed above, Officers are not consistently notifying their Supervisors after employing force or completing RRRs, and Supervisors are not adequately investigating uses of force.

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

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

1. Status and Assessment

The productivity of the Complaint Process working group declined during the Fourth Quarter. In fact, the OIM has not received any documentation from the Complaint Process working group showing that it met during the Fourth Quarter. Likewise, we did not receive a revised version of the Complaint Process working group's action plan.

Nevertheless, the Complaint Process working group continued to periodically inspect VIPD vehicles and Zones across the Department to

²⁰ As discussed *infra* at page 28, the OIM encourages the Police Commissioner to consider staffing IAB with additional VIPD personnel in order to meet the many demands placed on IAB.

confirm that complaint process materials (complaint forms and compliment/complaint brochures) were available. The Consent Decree specifically requires VIPD vehicles to be equipped with English, Spanish, and French and/or French Patois language versions of the complaint process materials. The Complaint Process working group reports that these materials were found at all locations that were inspected on St. Croix, but that vehicles in the St. Thomas District were not equipped with compliment/complaint brochures in Spanish and French. Although the Compliance Coordinator reminded the Complaint Process working group to document any inspections that it conducts, the OIM has not received any such documentation.

During the Fourth Quarter, the VIPD identified an individual to translate the revised English version of the compliment/complaint brochure into Spanish and French.²¹ With respect to the Patois translation, the OIM has previously reported that the Department has had difficulty identifying an individual to translate the brochure into Patois. This requirement, however, may be obviated because the Parties are negotiating revisions to the Consent Decree that would remove the requirement that the VIPD translate complaint process materials to Patois.

During the Fourth Quarter, the OIM conducted its own audit of VIPD facilities in the St. Thomas and St. Croix Districts to examine whether they had all of the required complaint process materials available. At an inspection of Zone C on St. Thomas, the OIM found that the compliment/complaint brochures were available only in French and Spanish, and that the complaint form was available only in English. The OIM encourages the Zones to take periodic inventory of their supply of complaint materials to ensure that the materials are available in all languages.

The VIPD also reports that during the Fourth Quarter it provided in-service training to all Commands on the Acceptance of Citizen Complaints Policy, which the Department issued concurrently with the Investigating Misconduct and Citizen Complaints Policy on August 2, 2011.²² OIM audits conducted on St. Thomas and St. Croix, however, revealed that more training is needed on the Acceptance of Citizen Complaints Policy. For example, when Officers in Zone C on St. Thomas

²¹ In January 2012, the translations were completed and they should be disseminated throughout the Virgin Islands during the First Quarter of 2012.

²² The VIPD reports that training on the Investigating Misconduct Complaint Policy is tentatively scheduled for April or May 2012.

and the Marshall Command on St. Croix were asked to explain the process for filing a citizen complaint, their responses omitted several steps required by the Acceptance of Citizen Complaints Policy, including: (1) when an Officer is approached by a person wanting to make a complaint, the officer should immediately notify the on-duty Supervisor who is supposed to respond to the scene and conduct a preliminary inquiry; (2) if the Supervisor cannot respond, then the desk Officer should complete the complaint form; (3) the Officer should then obtain a Complaint Control Number (“CCN”) from 911; and (4) the Officer should provide the CCN and a copy of the complaint to the complainant.

The Compliance Coordinator has also recognized that Officers’ knowledge of the Acceptance of Citizen Complaints Policy is deficient, and has urged the Complaint Process working group to ask the Police Commissioner to mandate increased Roll Call trainings on the policy. While Roll Call training is a helpful tool to reinforce policies, the OIM recommends that the Training Division also schedule more extensive in-service training on the Citizen Complaints Policy to address the deficiencies noted above. Because we reported on these same issues in the last quarterly report,²³ we urge the Department to act promptly.

Finally, since October 2010 the Department has actively promoted the citizen complaint process through a public information campaign on radio and television stations in both Districts.²⁴ During the Fourth Quarter, the Public Information Officer submitted a proposed budget for Public Service Announcements (“PSAs”) to the VIPD’s Chief Financial Officer. The VIPD reports that PSAs will continue to run in the interim.

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. The OIM is pleased with the Department’s progress with ¶ 43 of the Consent Decree, specifically developing complaint forms, brochures, and posters, and making those materials available at various governmental properties and community centers. However, ¶ 43 also requires the VIPD to document that the complaint process is functioning properly, from the intake of complaints to their ultimate disposition. To that end, the OIM (and hopefully the Complaint Process working group) will continue to monitor the entire complaint process, including, but not limited to, testing VIPD personnel on the Acceptance of Citizen Complaints Policy and Investigating

²³ OIM Third Quarterly Report of 2011 at 18, 21.

²⁴ OIM Second Quarterly Report of 2011 at 19; *see also infra* § V (Training).

Misconduct and Citizen Complaints Policy. In addition, the VIPD must promptly provide additional training on the Acceptance of Citizen Complaints Policy and train on the Investigating Misconduct and Citizen Complaints Policy.

2. Recommendations

As discussed above, the Complaint Process working group needs to begin meeting more regularly. Once the Complaint Process working group resumes meeting, it should revise its action plan to reflect new deadlines and identify the individuals responsible for meeting those deadlines.

The Complaint Process working group should also work with the Training Division to provide additional in-service training on the Acceptance of Citizen Complaints Policy. Likewise, the Complaint Process working group should ensure that the Training Division provides training on the Investigating Misconduct and Citizen Complaints Policy (which was issued on August 2, 2011) during the next quarter. The VIPD has pledged to provide training on the Investigating Misconduct and Citizen Complaints Policy during the First Quarter of 2012.

The Complaint Process working group should also conduct periodic audits to test whether VIPD personnel understand the complaint process and their responsibilities under the Acceptance of Citizen Complaints Policy. In addition, the Complaint Process working group should periodically audit complaint files to confirm that the Department is properly handling complaints at every step of the process (intake, investigation, and disposition). As we have previously emphasized, any such audits should be well-documented (when and where did the inspection take place, what were the results, etc.).

Additionally, the Complaint Process working group should continue its practice of confirming whether government properties and VIPD vehicles are stocked with the required complaint process materials. Similarly, the Department's Public Information Officer should follow-up with the Chief Financial Officer to ensure that adequate funds are allocated to the complaint process-related PSAs for 2012.

Finally, the OIM encourages the Complaint Process working group to periodically review information that the Director of IAB compiles from IAPro about complaint investigations that have taken longer than the statute of limitations permits. This review will provide an overview of the Department's complaint process, and help the Department identify areas for correction. The Complaint Process working group should also

consider drafting a policy/directive for the Police Commissioner's signature that requires the Chiefs and Deputy Chiefs to monitor the progress and due dates for completing the complaint investigations that are assigned to units in their Districts. Any such policy/directive should also require the Chiefs and Deputy Chiefs to take timely steps to ensure that due dates are met and, if not, take corrective action as appropriate.

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

1. Status and Assessment

As discussed above, the Investigating Misconduct and Citizen Complaints Policy governs how VIPD personnel investigate citizen and command complaints. Despite issuing the Investigating Misconduct and Citizen Complaints Policy more than six months ago (on August 2, 2011), the VIPD has not yet provided any corresponding training. While the Department has made significant progress on aspects of the citizen complaint process, there is no excuse for VIPD's failure to provide this training.

On October 6, 2011, the Assistant Commissioner sent a letter to the Virgin Islands Attorney General's Office requesting an attorney to provide training on the preponderance of evidence standard, which is the evidentiary standard that the Department uses to investigate complaints. While the IAB on both Districts has been using the preponderance of evidence standard to evaluate complaints for some time, Supervisors throughout the Department have not. On October 27, 2011, supervisory personnel in both Districts (from Corporal to Police Chief) received two hours of training (in addition to refresher training on the Acceptance of Citizen Complaint policy from IAB personnel) by an Assistant Attorney General on the preponderance of evidence standard and evaluating the credibility of witnesses.²⁵ The OIM observed the October 27, 2011 training and was pleased by the quality of the presentation. For example, the instructor used real-life examples to illustrate her lesson, and emphasized the importance of neutral witnesses. The OIM noted, however, that several Supervisors left the training for prolonged periods of time. The Complaint Process working group and the Training Division should work together to determine whether those Supervisors should receive credit for attending or be required to attend another session.

²⁵ The OIM previously reported that the VIPD's October 2010 training program on these topics was insufficient because the instructors lacked the necessary legal background. OIM First Quarterly Report of 2011 at 14-15. The Department's October 27, 2011 training was a marked improvement.

Finally, the Consent Decree and Investigating Misconduct and Citizens Complaint Policy also require the VIPD to periodically inform complainants about the status of related investigations, including any dispositions. Based on our observations, however, the VIPD does not appear to be consistently keeping complainants apprised of the status of their complaints. Likewise, under ¶ 45 of the Consent Decree, the Zones have five business days to refer complaints to the IAB. Despite that requirement, the Zones are not consistently complying with the five-day requirement. Because of the fifty-day statute of limitations that applies to misconduct by VIPD personnel, the Department cannot afford to let complaints about potential misconduct linger.

In sum, at the end of the Fourth Quarter, the VIPD is not in substantial compliance with ¶¶ 46-58 of the Consent Decree concerning the investigation of complaints. Specifically, the VIPD has not trained investigating Supervisors on the Investigating Misconduct and Citizens Complaint Policy. Additionally, the VIPD has failed to ensure that complaints are being adequately investigated or that complainants are being kept apprised about the status of their complaints. While the Department's public awareness campaign has increased the volume of complaints, the VIPD is still ill-equipped to handle them properly.

2. Recommendations

The VIPD should provide training on the following policies/standards during the First Quarter of 2012: (1) Acceptance of Citizen Complaints Policy (further in-service and Roll Call training) and (2) Investigating Misconduct and Citizen Complaints Policy. As always, the Department should provide the OIM with documentation for any training programs that it conducts, including, but not limited to, lesson plans, handouts, and attendance sheets. In addition to specifically addressing each policy/standard, the Department should provide instruction on proper techniques for interviewing police officers and how to identify potential misconduct. As we have repeatedly emphasized, the Department will not be able to achieve substantial compliance until it adequately trains its personnel.

Finally, the VIPD should assess staffing levels at the IAB to ensure that it has the capacity to manage the Department's new complaint process. In addition to conducting its own complaint investigations (and being responsible for other important tasks unrelated to the complaint process), the IAB must provide oversight for the Zone's complaint investigations. In light of the IAB's multitude of responsibilities, the OIM encourages the Police Commissioner to consider assigning additional personnel to the IAB.

IV. Management and Supervision (CD ¶¶ 59-72)**A. Risk Management System (CD ¶¶ 59-68)****1. Status and Assessment**

While the Management and Supervision working group had a strong track record in prior quarters (meeting regularly, providing revised versions of its action plans, etc.), it was much less productive during the Fourth Quarter. The OIM is not aware of any meetings during the Fourth Quarter by the Management and Supervision working group.

The Consent Decree requires the VIPD to implement a risk management system (“RMS”) to track incidents and identify patterns relating to potentially problematic behavior by VIPD personnel at an early (and hopefully remediable) stage. The VIPD chose a computer program called IAPro as its RMS. As reported last quarter, after lengthy delays, IAPro is now functional in the IAB offices in both Districts. Similarly, Blue Team—a companion computer program to IAPro that allows RRRs and complaints (among other things) to be entered into IAPro—is also operational across the Districts (at the Zones and IAB offices). However, because IAB on St. Croix physically moved offices during the Fourth Quarter, Blue Team was temporarily disabled. The VIPD anticipates that Blue Team will be restored at the IAB office on St. Croix in early 2012.²⁶

Despite significant progress implementing IAPro, monitoring conducted during the Fourth Quarter revealed that IAPro is not yet being fully utilized. For example, the OIM discovered that the Marshall Command on St. Croix and Zone A on St. Thomas did not have access to IAPro or Blue Team. The on-duty Commander at Zone A on St. Thomas stated that the Department’s computer technicians were aware of the issue, but that no date had been provided as to when the issue would be resolved. However, he said that if he needed to access Blue Team, he would access it from IAB or Zone C.²⁷ In addition, Management and Information Systems (“MIS”) (the Department’s information technology group) reported last quarter that it ordered hard drives for each District

²⁶ The OIM understands that as of March 12, 2012 (the date of this Quarterly Report), Blue Team has been restored on St. Croix.

²⁷ Although IAPro is operable at Zone C, the OIM learned that Supervisors may have difficulty accessing Blue Team screens that will allow them to enter information because of “pop-up” blockers installed by Management and Information Systems (“MIS”) to prevent Officers from accessing certain websites. To the extent that the pop-up blockers are being triggered by Blue Team, the OIM encourages MIS to promptly resolve the issue.

because the Department needed to increase its electronic storage capacity to accommodate IAPro and a training database that is under development. The VIPD reports that the manufacturer continued to delay delivery of the hard drives during the Fourth Quarter. All of these technical issues need to be resolved before the VIPD will be in compliance with the Consent Decree.

Based on our monitoring during the Fourth Quarter, it is clear that additional training on IAPro and Blue team is necessary. Even Supervisors who previously received some instruction on Blue Team need more training. For example, on multiple occasions, Supervisors needed assistance from others to access Blue Team, and did not know how to access or review information once logged on. Through the Fourth Quarter, personnel from IAB and MIS were responsible for training Supervisors on Blue Team. While those trainings represent a positive first step, the Management and Supervision working group should coordinate with the Training Division to institute a more structured training program. To that end, the OIM is pleased that the Acting MIS Director has arranged for a computer lab at the Department's Training Academy on St. Thomas to train Supervisors on Blue Team (a similar computer lab already exists on St. Croix).²⁸ The VIPD reported that computer-based training on IAPro and Blue Team for Supervisors was supposed to begin in January 2012. However, as of December 31, 2011, the OIM had not been notified of any such training. In order to effectively monitor the VIPD's training programs, the Department must provide the OIM with advance notice of all training programs. Given that training programs are typically scheduled far in advance, the OIM would like to receive as much advance notice as possible, but no less than one month.

Progress on the VIPD's RMS Protocol has been slow, but the VIPD continues to make progress. The RMS Protocol provides various thresholds that trigger supervisory review. For example, if an Officer receives more than X number of complaints within Y period of time, IAPro will alert the Officer's Supervisor (and other appropriate personnel) to the potential issue and need for review. During the Fourth Quarter, the DOJ provided the Department with several rounds of comments, and in January the OIM participated in a teleconference with the DOJ and the VIPD to discuss the most appropriate mechanism to identify

²⁸ Before the computer lab can be used, however, a water leak must be repaired and the ten computers assigned to the lab must undergo software updates. Both issues, which are being addressed by MIS, prevented training from proceeding in December.

potentially problematic conduct.²⁹ The Consent Decree requires that the VIPD use ratios based on the conduct of VIPD personnel (the total number of arrests where force was used divided by the total number of arrests) to identify potentially problematic behavior. The VIPD, however, currently uses numerical thresholds based on historic norms (X number of uses of force within a 12 month period).

The VIPD contends that on-going limitations and incomplete arrest and force records would render ratios unreliable for the time being. With respect to the Department's arrest and force records, that information may be unreliable because: (1) there are instances where Officers make an arrest, use force, and release the subject without completing an arrest report or documenting the release; (2) when arrests are documented, the arrest report may not identify all involved officers (particularly where a group of officers is involved in an arrest); and (3) Officers who physically make an arrest are not always identified in the arrest report. In addition, the Department is concerned about the application of the ratio as their current policy defines force broadly as anything beyond compliant handcuffing. Under this definition, the number of times force is used during an arrest would be significant.

In order to move forward on the RMS Protocol, the DOJ and VIPD agreed, that for the time being, the VIPD may use thresholds rather than ratios. As such, IAPro will notify an Officers' Supervisor when the Officer reaches two uses of force within a six month period. The Early Intervention Program Coordinator will then conduct a review and determine if further action is required. Nevertheless, because the Consent Decree requires the use of ratios, the Department will not be in compliance with the Consent Decree until it implements a ratio-based RMS Protocol.

The DOJ approved the VIPD's Data Input Plan on March 22, 2011, but the Department had not provided any training on the plan as of December 31, 2011. The Department blames the delay on a change in leadership at the Training Division in December 2011. While the change in personnel may be a factor, it does not excuse the preceding ten-month delay. 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. To help track VIPD

²⁹ The comment and revision process began on April 15, 2011 when the VIPD submitted its first draft of the RMS Protocol to the DOJ.

personnel (who may change jobs functions, names, etc.) the Police Commissioner issued a Directive on December 15, 2011 directing that a Permanent Designator Number (“PDN”) be assigned to all sworn personnel, including designated civilian personnel with assignments as agents, auxiliaries, and forensic technicians. The PDN is a four digit number assigned by the Virgin Islands Territorial Emergency Management Agency (“VITEMA”), which is responsible for the Virgin Island’s 911 system. Officers will be required to use their PDN number, rather than their badge numbers (as was the previous practice) on all police reports.³⁰ The OIM will begin to track whether VIPD personnel are complying with the Directive during the next quarter.

As previously reported, IAB seeks to enter information into IAPro dating back to 2009. IAB reports that it has entered data from 2010 to present (some of which is incomplete), but has not been able to meet its goal of going back to 2009 because it does not have enough personnel to assist with data entry. Because IAPro seeks to identify potentially problematic conduct based on established norms, IAPro functions best when it has abundant information to analyze. The Police Commissioner and Management and Supervision working group should assist the IAB to identify personnel to help with data entry.

Lastly, the VIPD is developing certain policies and protocols to support the RMS. These include: (1) Blue Team Protocol; (2) Behavioral Health Services Policy; (3) Psychological Fitness for Duty Evaluation Policy; and (4) Officer Peer Support Policy. Once these policies are in “near final” form as described above (*see supra* Section I. Use of Force Policies), we encourage the Department to share them with the OIM for comment.

In sum, while the VIPD has made significant progress implementing IAPro, a number of issues still need to be addressed relating to training and outstanding technical problems. In addition, the Department needs to finalize the RMS Protocol and other RMS-related policies, such as the Data Input Plan. Therefore, at the end of the Fourth Quarter, the Department has not yet substantially complied with ¶¶ 59-68 of the Consent Decree.

2. Recommendations

The Management and Supervision working group needs to increase its activity level going forward to address a number of outstanding issues

³⁰ VIPD personnel will have a particular PDN for their entire career.

relating to the Department's RMS. For example, the Department needs to remedy outstanding technical issues relating to IAPro and Blue Team, including, but not limited to, expanding the storage capacity of the Department's servers and ensuring that IAPro and Blue Team can be accessed from each Zone. Second, the Management and Supervision working group should coordinate with the Training Division to institute more structured training for Supervisors on Blue Team, as well as other RMS-related policies (such as the Data Input Plan). Likewise, the Management and Supervision working group should audit Supervisors' familiarity with Blue Team in order to identify particular areas for improvement. Third, the Management and Supervision working group should promptly finalize the Department's RMS Protocol, Blue Team Protocol, Disciplinary Policy and Matrix, Behavioral Health Services Policy, Psychological Fitness for Duty Evaluation Policy, and Officer Peer Support Policy. Once those policies are in "near final" form, the OIM would welcome the opportunity to provide comments. Finally, the Management and Supervision working group should consult with the IAB to develop a plan to enter additional historical use of force information into IAPro.

B. Oversight (CD ¶ 69)

1. Status, Assessment, and Recommendations

The VIPD is not in substantial compliance with ¶ 69 of the Consent Decree because it has not yet finalized and implemented the Audit Protocol for its RMS. The VIPD finalized the Data Input Plan, but as mentioned above, is still revising the RMS Protocol. The VIPD will not be able to fully implement its RMS until it finalizes the Audit Protocol.

The OIM reported last quarter that the Assistant Commissioner created an audit unit to evaluate the effectiveness of internal controls across the Department. According to the VIPD, the Assistant Commissioner formally announced the Audit Team to the Department in a memorandum on October 27, 2011.³¹ The new Director of Training, who also serves as the Consent Decree Manager, will serve as Head of the Audit Team and will be joined by the Director of the Intelligence Unit, the Assistant Director of IAB, and a VIPD Corporal. When the Assistant Commissioner first raised the possibility of appointing the Consent

³¹ Although the VIPD provided the OIM with a draft of the memorandum in September, the Department never provided the OIM with a final copy of the Police Commissioner's October 27, 2011 memorandum. In the future, the VIPD should provide the OIM with any similar materials relating to the Consent Decree.

Decree Manager as Head of the Audit Team, the OIM expressed concern that such an appointment could interfere with his responsibilities as Consent Decree Manager. Now that the Consent Decree Manager is also serving as the Director of Training, the OIM renews this concern.³²

With respect to the Audit Committee, the VIPD reports that a draft version of an audit protocol (which is distinct from the RMS Audit Protocol) was sent to the Police Commissioner in October 2011 after being reviewed by the Committee. Among other things, the audit protocol will describe procedures for conducting audits. Additionally, the VIPD reports that it is currently researching appropriate training programs for the Audit Team to address their new responsibilities and, in particular, to train them on auditing procedures. The OIM looks forward to receiving further updates from the Head of the Audit Team about the progress and work of the Audit Team.

C. Discipline (CD ¶¶ 70-72)

1. Status, Assessment, and Recommendations

As previously reported, the DOJ has approved the Disciplinary Policy and Matrix,³³ which provides disciplinary guidelines for different types of misconduct. The VIPD, however, has decided to revise the charge and penalty section of the policy. On December 16, 2011, the OIM attended a meeting with the Assistant Police Commissioner, Deputy Police Chief for St. John, Deputy Police Chief for the St. Thomas District, and a Sergeant from the St. Croix District (representing the Chief of Police for the St. Croix District) in which penalties for Category D offenses were discussed.³⁴ The revisions made at that meeting will be incorporated into the next revision of the policy for the Committee's review. Once the Disciplinary Policy and Matrix are revised, the VIPD

³² This concern also applies to the other members of the Audit Team who all have other departmental duties. The OIM initially encouraged the VIPD to create an audit division dedicated to assessing the Department's compliance with the Consent Decree. The OIM recommended that the division should be staffed with at least two full time employees (with the head of the division serving as a Director) on each District who report directly to the Police Commissioner.

³³ OIM First Quarterly Report of 2011 at 19.

³⁴ The Disciplinary Policy and Matrix describe Category D offenses as "[v]iolations of policy that involves untruthfulness or other ethical offenses, any felonious conduct, or offenses that create or pose the potential for critical adverse impact on public safety or the professional image of the department."

must resubmit the Matrix to the DOJ for approval.³⁵ The VIPD reports that another meeting will be held to continue review of the Disciplinary Policy, but no date has been set. When the date is finalized, the OIM requests that the Department advise the OIM so that we can attend the meeting.

As the OIM has repeatedly stressed, it is important that the VIPD finalize the Disciplinary Policy and Matrix as soon as possible. This will help foster a more uniform and equitable application of disciplinary sanctions.³⁶ Among other things, the VIPD should consider imposing more significant sanctions for missing required training programs. As discussed below (*infra* at 40-41), the now-former Director of Training provided written notice to Police Commissioner Francis about VIPD personnel with unexcused absences from various training programs. When remedial training was scheduled, several of those individuals refused to attend. To the best of the OIM's knowledge, none of those individuals were disciplined. The OIM requests additional documentation about the Department's response (if any) to these "no shows" in the next quarter.

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

V. Training (CD ¶¶ 73-81)

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

1. Status and Assessment

The Director of Training leads the Training working group. As noted above, the Police Commissioner appointed the Consent Decree Manager to serve as the Director of Training on December 28, 2011.

The OIM is hopeful that the new Director of Training will be able to reinvigorate the Training working group, which has languished over the

³⁵ While the Consent Decree does not require DOJ approval for the Disciplinary Policy, the VIPD voluntarily submitted it to the DOJ for its review, and the DOJ agreed to provide technical assistance. The DOJ completed providing technical assistance to the VIPD on the Disciplinary Policy on April 26, 2011.

³⁶ As previously reported, the OIM has observed first-hand (and heard about anecdotally) the Department's inconsistent and disparate application of disciplinary sanctions (for which there is no reasonable explanation). See, e.g., OIM Fourth of Quarterly Report of 2010 at 24.

past several quarters. For example, despite multiple requests from the OIM, the Training working group did not provide an action plan or meeting minutes during the Fourth Quarter. The Training working group needs to meet more regularly, and should prioritize developing an action plan. One of the Training working group's most significant responsibilities is to coordinate with other working groups and the Committee to develop training programs relating to new policies. In addition, the OIM has encouraged the Training working group to develop a process to semi-annually review policies and corresponding training programs to ensure quality, consistency and compliance with all applicable laws. The OIM has also encouraged the Training working group to, among other things, review student evaluations from training programs and occasionally audit training programs to determine whether training is being delivered in an effective fashion.

The OIM has repeatedly asked the Training Division to provide the OIM with updated training schedules on a regular basis. The Training Division has, unfortunately, failed to do so. In fact, during the Fourth Quarter, the Training Division never proactively provided the OIM with an updated training schedule. Instead, the OIM had to repeatedly ask for training schedules (on 5 separate occasions during the Fourth Quarter), often receiving a delayed response or no response at all. Going forward, the OIM hopes that the new Director of Training will take personal responsibility for keeping the OIM apprised of scheduled training programs.

During the Fourth Quarter, the Police Commissioner reiterated that the Department should focus on Consent Decree-related training, an initiative introduced by the Assistant Commissioner in a memorandum during the Third Quarter. Yet, as described below, very little Consent Decree training took place this quarter.³⁷ Indeed, during a recent monitoring trip the now-former Director of Training acknowledged that training had stalled. The Department's lack of Consent Decree-related training during the Fourth Quarter is largely attributable to a bureaucratic impasse between the Department and the Bureau of Property and Procurement's ("Property and Procurement"), the Virgin Islands' government entity that must approve government contracts. According to the VIPD, Property and Procurement requires vendors to satisfy a number of requirements before permitting the Department to

³⁷ The Assistant Commissioner's September 6, 2011 memorandum also directed the Training Division to explore federal funding opportunities to conduct Consent Decree-related training. The Department should provide an update on its efforts to secure federal funding.

formally engage the vendor, which has made it very difficult to engage outside vendors. For example, vendors located outside of the Virgin Islands are often required to obtain a business license from the Department of Licensing and Consumer Affairs, a process that can take several weeks or more.

Because of these requirements, the Department reports that the following training programs were delayed during the Fourth Quarter: (1) Field Training Officer; (2) SWAT Certification of Teams, Basic and Advance; (3) Instructor Development; (4) Investigating Use of Force for Supervisor; (5) Taser Instructor; (6) Investigating Misconduct and Citizen Complaint; (7) Arrest Procedure, Search and Seizure, Fourth and Fifth Amendments; (8) Off-Duty Officer Conduct; (9) Vehicle Pursuits; (10) Use of Spike Strips; and (11) Police Administration Executive Training. The Training Division is concerned that the Department has harmed its relationship with some potential vendors because the Training Division has had to repeatedly cancel or postpone training programs.

In an effort to move forward with Consent Decree-related training, the Department has proposed funneling all training vendors through the Policy Consultant, who is already licensed to do business in the Virgin Islands. The OIM is hopeful that an alternative approach will provide the Department with greater flexibility to engage vendors. The VIPD should provide an update during the next quarter on the implementation and success of this alternative procedure. In the event that this procedure does not work, the OIM expects to see a plan describing how the Department will resolve the current impasse. We also encourage the Governor and/or Attorney General to take a more active role to resolve this issue.

The Department could avoid the delays associated with engaging outside training vendors by building its internal training function. An internal training function would also generally be better equipped than outside vendors to tailor training programs to the Department's specific needs and policies, be able to deliver the training in a timelier manner, and would likely be more cost effective in the long term. In order to build its internal training infrastructure, the Training Division should identify a core group of instructor candidates and provide them with the required instructor certifications. At the same time, the Training Division should also develop a uniform, Department-wide training curriculum that systematically addresses each area of the Consent Decree. Also, to the extent that training programs contain legal components, we encourage the Training Division to formalize an arrangement with the Attorney

General's Office to provide attorney-instructors as needed, and to review all training material with legal content.

As we have repeatedly stressed, the Training Division should also develop training programs for policies in advance of the Department issuing them. To facilitate that process, the Training Division should maintain regular contact with the Committee and working groups. In addition, to the extent that the Department continues to rely on training vendors, the Training Division should provide them with copies of all relevant policies and any other VIPD-specific materials so that they can incorporate them into their lesson plans. When the OIM attended the Expandable Baton and O.C. Defensive Spray Instructor training programs at the end of the Fourth Quarter,³⁸ the OIM was pleased to learn that the Training Division had adopted this practice. The instructors' training materials included copies of the Department's issued Impact Weapons Policy and the O.C. Spray Policy, and the instructors specifically addressed the policies during the training. For example, the instructors noted several areas where the VIPD's O.C. Spray Policy was deficient. Accordingly, they indicated that they intended to provide the Department with suggested revisions.³⁹ To the extent the VIPD decides to make any revisions to the policy, the VIPD must resubmit the policy to DOJ for approval.

The Training Division conducted other training for VIPD personnel in both Districts during the Fourth Quarter. Specifically, the Training Division held training on the following topics: Introduction to Street Spanish Language for Officer Survival (funded by a Federal grant); Management and Supervision; Defensive Tactics for Instructors; Preponderance of the Evidence Standard (*see supra* Section III. Citizen Complaint Process); and Acceptance and Processing of Citizen Complaints for Supervisors (*see supra* Section III. Citizen Complaint Process). Other than a lesson book that the OIM received for the Defensive Tactics for Instructors training, the OIM has not received any documentation related to these training programs.

³⁸ The Training Division reports that seven Officers on St. Croix and nine Officers on St. Thomas were certified to train and certify other instructor-candidates on the Expandable Baton and O.C. Defensive Spray Policies.

³⁹ For example, the instructors said that the policy's estimate that the effects of O.C. Spray dissipate after thirty to forty-five minutes was a low estimate and that most subjects continue to feel the effects of the spray up to two hours after the O.C. Spray is deployed.

The VIPD also reports that in anticipation of the upcoming supervisor promotions, the Assistant Commissioner sent a memorandum to the Training Division on November 16, 2011 directing it to develop a curriculum to train the Officers identified for Supervisory promotions. Paragraph 81 of the Consent Decree requires the VIPD to provide newly promoted Supervisors with training within 90 days of assuming supervisory responsibilities. The Consent Decree also requires newly promoted Supervisors to be trained on the appropriate burdens of proof, and factors to consider when evaluating complainant or witness credibility. Finally, the VIPD is also required to provide training “on leadership and command accountability, including techniques designed to promote proper police practices.” The Department reports that it conducted a preliminary supervisor training program on December 19, 2011 for those Officers who will be promoted. The OIM, however, never received any related documentation other than a list of twelve topics to be covered during training, including, but not limited to, conflict resolution, time management, planning and organizing, motivation, the principles of supervision, and discipline and control. In addition, while we commend the Department for providing this training, we note that additional training sessions are required to satisfy ¶ 81 of the Consent Decree. Future supervisory training should place a heavy emphasis on the Consent Decree, including requirements under the Consent Decree and the role Supervisors play in achieving substantial compliance.

During a December 15, 2011 meeting with the VIPD, the Attorney General’s Office, the DOJ, and the OIM, the now-former Director of Training said that he would provide the OIM with a list of all training programs scheduled for 2012. The VIPD reports that it is creating a six month training calendar that includes training on the following policies: (1) Firearms; (2) Off-Duty Official Action; (3) Field Training Officer Program; (4) SWAT; (5) Investigating Use of Force for Supervisors;⁴⁰ (6) Investigating Misconduct and Citizen Complaints; and (7) Data Input Plan. According to the VIPD, this schedule will identify all Consent Decree training, target dates, and the individuals conducting the training. At the end of the Fourth Quarter, however, these training sessions remained tentative. We also note that several additional training programs that were scheduled to take place during the Fourth Quarter, but were postponed—including Basic and Advanced Tactical,

⁴⁰ The Department planned to provide training for Supervisors on investigating uses of force during the Fourth Quarter, but those programs were postponed because the Department was unable to procure the appropriate contracts.

Tactical Marine, and Spike Strip train-the-trainer certification⁴¹—should take place during the first six months of 2012. In addition, the VIPD has not specifically reported on its plans to train on several recently issued policies, including the Vehicle Pursuit Policy. The Department should promptly provide training on those policies.

As previously reported, the OIM considers the FTO program to be critical. The OIM is encouraged by the VIPD's inclusion of FTO training on the list of training programs being scheduled for early 2012. OIM monitoring, however, has uncovered a real need for training since the current FTOs were never adequately trained, and the rudimentary training that they received focused on how to fill out basic paperwork relating to their trainees. As reported during the Third Quarter, the VIPD had previously nominated a number of officers to participate in the FTO program who had questionable performance or disciplinary records. As such, the Department must ensure that the Officers selected to participate in the FTO Program are qualified in all respects. To that end, in the Third Quarterly Report of 2011 the OIM requested more information about how FTOs are selected, including the minimum qualifications that FTOs must have (years of service, above average performance evaluations) and what actions will disqualify them from serving (sick roll abuse, citizen allegations, traffic accidents). Further, the OIM requested additional information about how FTOs are trained, including copies of any lesson plans or other materials that are used in training. To date, the OIM has not received any information in response.

As we reported last quarter, the now-former Director of Training provided written notice to the Police Commissioner's Office and Chiefs' Offices about Officers and Supervisors from both Districts with unexcused absences from the force-related and complaint process training conducted in the spring. The now-former Director of Training rescheduled these "no shows" for retraining during the Fourth Quarter, but many of the officers (28 in the St. Croix District and 4 in the St. Thomas District) failed to attend. The VIPD, however, has not disciplined these Officers. When asked how the Training Division should address this insubordination, the OIM recommended that the Director of Training should send a memorandum to each Officer or Supervisors' Chief or Deputy Chief, copying the Police Commissioner, Assistant Commissioner, and IAB, requesting that an investigation be conducted to determine why the Officer or Supervisor failed to attend the training. The Chief or

⁴¹ The Spike Strip train-the-trainer instructor program is crucial because, as discussed above, the VIPD must start building its internal training function.

Deputy Chief should be required to complete the investigation and report his or her findings to the Commissioner, IAB, and the Director of Training within ten days of the request. If the investigation determines that there is no reasonable excuse for the Officer or Supervisor to have missed the training, the Chief or Deputy Chief should ensure that the Officer or Supervisor is disciplined.

Similarly, the VIPD reports that the Chief of the St. Croix District directed 12 of his subordinates (ranging in rank from Officer to Captain) to contact the Training Division to review recorded versions of use of force training that they failed to attend, and to certify in writing that they viewed the recorded training. In addition, the Chief of the St. Croix District should also consider, if appropriate, disciplining VIPD personnel who failed to attend the scheduled training. During the next quarter, the OIM would like an update on whether those individuals completed the training and demonstrated proficiency as required, and if not, what steps were taken to discipline the Officers.

During the Fourth Quarter the OIM also learned that the now-former Director of Training took possession of VIPD-issued firearms from 3 sworn personnel because they failed to qualify (after 3 attempts) on their service firearms. The OIM was surprised and alarmed to learn that certain senior members of the Department did not support the now-former Director of Training's decision to strip those individuals of their firearms, despite the fact that the Department was required to do so under the Firearms Policy. The VIPD subsequently held remedial firearms training for those individuals on St. Croix, but not St. Thomas.

The OIM commends the Chief of the St. Croix District for spearheading a series of Roll Call training sessions during the Fourth Quarter.⁴² As the OIM has repeatedly advocated, Roll Call training is an important tool for reinforcing the Department's policies following in-service training (particularly to reinforce Consent Decree provisions for

⁴² Pursuant to a November 1, 2011 Directive issued by the Chief of the St. Croix District, Roll Call training was held during the Fourth Quarter in the Wilbur Francis and Marshall Commands on a variety of subjects, including: Transporting/Processing Prisoners; Searching an Arrestee; Handling Mentally Disturbed Persons; Police Visibility and State of Readiness, Roll Call Training, Departmental Courtesy; Collective Knowledge Doctrine for Misdemeanors; Security Rings; Directed Traffic Enforcement Activities and Removal of Abandoned Motors; Pedestrians Using the Public Roadway; ECW Policy; Vehicle Towing; DUI Enforcement Activities/Impound Sticker; Pedestrian Act/Dropping and Picking Up Passenger; Acceptance of Citizens Complaints Policy; Vehicle Pursuit Policy; Crime Scene Protection; Domestic Violence Updates/Questions/Answers; DWI Detection and Standardized Field Sobriety Test; and Firearms Inspection/Cleaning.

which VIPD personnel have had difficulty demonstrating proficiency). The OIM encourages the Chief to coordinate with the Training Division to ensure that it collects relevant information about each Roll Call training for its training records. The OIM also recommends that the Use of Force working group continue to work with the Training Division to standardize the form that the Department uses to document Roll Call training.⁴³ The OIM requests that the VIPD also provide any documentation (lesson plans and attendance sheets) for Consent Decree related Roll Call trainings to the OIM shortly after completing the training.

Generally, the Training Division has made progress documenting various aspects of its training program in recent quarters. During the last quarter, for example, the VIPD reported that the Director of Training began working with MIS and an outside vendor to develop a database of training records. While the database is being developed, the Training Division continues to update its manual file system in both Districts. The OIM will continue to review these files to ensure that the Training Division is maintaining adequate training records for each sworn employee.

Finally, the OIM has long encouraged the VIPD to create a reference source for all of its force-related policies. During the Fourth Quarter, the Training Division reports that it ordered 500 binders to distribute the relevant policies to VIPD personnel. As the Department updates and/or adds additional policies to its library of force-related policies, the Training Division should ensure that these binders are promptly updated.

2. Recommendations

With respect to training, the Department's highest priority should be to resolve the current impasse with Property and Procurement. We encourage the Police Commissioner (as well as the Governor and Attorney General) to take a more active role on this issue. The Department's inability to provide training programs relating to its recently issued force-related policies has prevented the VIPD from making more progress on compliance with the Consent Decree.

The OIM also encourages the Department to improve its internal training function to avoid the need to continually engage expensive outside training vendors. VIPD instructors should be able to more fully

⁴³ The OIM provided comments on a draft version of the Roll Call Training Form at the beginning of 2012.

tailor training programs to the Department's specific needs. Additionally, the Department will have a better opportunity to vet training programs taught by VIPD instructors given that outside training vendors typically visit the Virgin Islands for short periods of time and charge by the day and/or training session. As we have emphasized in previous reports, every lesson plan and training program should be vetted by Training Division personnel and a cross section (of ranks) of high performing VIPD personnel with relevant expertise.

Going forward, the Training Division must also provide the OIM with updated training schedules on a periodic basis (but no less frequently than each month). Because so many aspects of the Consent Decree are tied (directly or indirectly) to training, it is crucial for the OIM to have the opportunity to attend. During the next quarter, the Training Division should work with the Complaint Process working group to hold training programs on the Acceptance of Citizen Complaints Policy (further in-service training and Roll Call training) and the Investigating Misconduct & Citizens Complaints Policy. The OIM is hopeful that the Training Division will follow through and schedule these training programs for the First Quarter of 2012 as they have indicated. Likewise, the Training Division should work with the Use of Force working group to implement all outstanding force-related training programs, including but not limited to those concerning the Vehicle Pursuit Policy, Off-Duty Official Action Policy, Spike Strip Policy (instructor training), and Field Training Evaluation Program. The OIM has repeatedly encouraged the Training Division to remain in close contact with each of the working groups to develop training programs for policies/directives that are still under development or that the Department has recently issued (e.g., Investigating and Review of Use of Force).

With regard to future training programs, the OIM also recommends that the Director of Training work with the Chiefs and Deputy Chiefs to schedule "units" to attend training programs together. This will promote team building and consistency of practice among units. Also, the Training Division must develop a Roll Call/Commanders Call procedure for effectively informing Officers and Supervisors of relevant changes in policies and procedures.

With regard to Officers and Supervisors who have unexcused absences from mandatory training programs, the OIM recommends that the Training Director send a memorandum to each Officer or Supervisors' Chief or Deputy Chief, copying the Police Commissioner, Assistant Commissioner, and IAB, requesting that an investigation be conducted to determine why the Officer or Supervisor failed to attend the

training. If the investigation determines that there is no reasonable excuse for the Officer or Supervisor to have missed the training, the Chief or Deputy Chief should ensure that sanctions are imposed. In addition, the Chief or Deputy Chief should also order the Officer or Supervisor to contact the Training Division to schedule a make-up training session by a date certain. The OIM encourages the Police Commissioner to hold the Chiefs and Deputy Chiefs accountable for their subordinates' compliance with training requirements.

Despite making progress during the Fourth Quarter, the VIPD has not yet substantially complied with ¶¶ 73-81 of the Consent Decree. In addition to holding training programs for a number of recently issued policies, the Training Division must work closely with the Use of Force, Complaint Process, and Management and Supervision working groups to prepare training programs for policies that are under development. Moreover, the Training Division must identify areas that require additional training, either through additional in-service training or Roll Call training, to ensure that VIPD personnel adequately understand their obligations.

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

1. Status, Assessment, and Recommendations

On January 13, 2012 the VIPD submitted its eleventh Status Report to the DOJ and OIM. The eleventh Status Report reflects the most comprehensive description of the VIPD's efforts to move towards substantial compliance that the OIM has reviewed to date. We reiterate that it is in the VIPD's interest to share as much information with the OIM as possible so that we can accurately, fairly and comprehensively report on all of the VIPD's efforts in addition to those that we become aware of through our own monitoring. To that end, we suggest that the Department append certain additional materials relating to the Consent Decree to its status report, including, but not limited to, any policies, directives, or memoranda that were issued during the prior quarter, revised action plans and meeting minutes for each working group, documentation of any internal audits, and training attendance sheets and lesson plans. Finally, the OIM encourages the VIPD to state in its status report whether it believes that it has achieved substantial compliance with each substantive provision of the Consent Decree.

2. Status of Substantial Compliance

Before the Consent Decree expires on March 23, 2014, the VIPD must substantially comply with each Consent Decree provision and remain in compliance for two years.⁴⁴ Under the Consent Decree Timetable, the VIPD should have substantially complied with ¶¶ 32-58, 70, and 72 by May 31, 2011, ¶¶ 60, 61, and 73-81 by June 30, 2011 and ¶¶ 49, 59, 63-66 by September 15, 2011. Instead, they have only complied with ¶¶ 82-86, 88 and 98.

Specifically, the OIM previously reported that by the end of the Third Quarter of 2011, the VIPD had only complied with the following Consent Decree provisions (a chart summarizing the VIPD's progress toward substantial compliance is at the end of the Executive Summary at the beginning of this Report):

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

The OIM provided a draft Substantial Compliance Thresholds Chart ("Chart") to the Department on November 1, 2011. The Chart is intended to guide the VIPD towards substantial compliance by identifying the criteria that the OIM will use to evaluate the VIPD's compliance with the Consent Decree. After receiving general comments from the VIAG during the Fourth Quarter, the OIM sent a letter on December 1, 2011 requesting a conference call to discuss their comments. In an effort to move forward with finalizing the Chart, the OIM also requested that the Parties provide concrete proposals for modifying the Chart. To date, the VIAG and the VIPD have not yet made themselves available to discuss the Chart. There is simply no excuse for this delay. We encourage the Police Commissioner to follow-up with the Attorney General about the OIM's outstanding request for their proposed revisions.

⁴⁴ CD ¶ 103.

Despite these delays, the OIM remains hopeful that it will finalize the Chart and begin to use it to evaluate the Department's compliance in the second half of 2012. Once the Chart is implemented, the Audit Team should utilize it to conduct its own internal audits during the life of the Consent Decree and beyond.

Conclusion

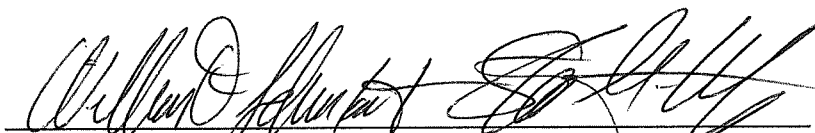
For the past several quarters, the OIM has warned the VIPD that it was in danger of not being able to substantially comply with the Consent Decree (and remain in substantial compliance for two years) before its expiration on March 23, 2014. Unfortunately, although the VIPD has made significant strides in certain areas, it is now clear that the VIPD will not satisfy most of its obligations under the Consent Decree in a timely manner. However, the OIM continues to believe that, with the right leadership and commitment, the Department has the capacity to comply with the Consent Decree. The Department, however, cannot carry on at its current pace. To that end, we encourage the Police Commissioner to hold every member of the Department (particularly the executive leadership team, including the Assistant Commissioner, Chiefs and Deputy Chiefs) accountable for making progress on the Consent Decree. The VIPD entered into the Consent Decree nearly three years ago. The time has clearly come for the Department to recommit itself to complying with the Consent Decree as soon as possible.

In order to move toward substantial compliance, the working groups must improve their productivity and coordinate with each other. The OIM commends the VIPD for continuing to develop and issue policies, but issuing policies is not sufficient. Policies must then be implemented by training personnel and ensuring compliance. This process, however, stalled during the Fourth Quarter. For example, the Training Division failed to hold a number of training programs related to the Consent Decree because of an impasse with Property and Procurement. In addition to resolving that issue, the Department should develop an internal training infrastructure to obviate its current reliance on outside training vendors.

In addition, the Department needs to ensure that VIPD personnel are complying with their obligations under the Department's policies. The creation of a new Audit Unit is a positive first step. Moreover, to the extent that VIPD personnel fail to meet their obligations, the Department should provide remedial training and/or impose disciplinary sanctions as appropriate.

Finally, the Department's Supervisors are critical to the VIPD's compliance with the Consent Decree. As such, the OIM encourages the VIPD to proceed with planned promotions as soon as possible, and to ensure that new Supervisors promptly receive all necessary training.

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



William F. Johnson and Steven M. Witzel
Independent Monitors

March 12, 2012

Fried, Frank, Harris, Shriver & Jacobson LLP

Principal Contributors

Leah C. Aden, Esq.

Ann Marie Doherty, Esq.

Charles A. Gruber

Elizabeth P. Kozlowski, Esq.

Dennis E. Nowicki

Joshua D. Roth, Esq.

Robert L. Stewart

Appendix A

Summary of Consent Decree Requirements

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

I. Use of Force Policies (CD ¶ 31)

A. Requirements

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

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

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

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

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

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

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

1. Requirements

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

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

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

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

Footnote continued from previous page

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

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

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

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

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

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

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

1. Requirements

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

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

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

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

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

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

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

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

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

1. Requirements

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

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

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

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

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

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

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

opinions regarding the complainant's mental competency or veracity.

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

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

1. Requirements

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Requirements

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

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

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

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

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

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

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

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

⁸ See CD ¶ 66.

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

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

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

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

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

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

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

B. Oversight (CD ¶ 69)

1. Requirements

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

C. Discipline (CD ¶¶ 70-72)

1. Requirements

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

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

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

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

V. Training (CD ¶¶ 73-81)

A. Management Oversight (CD ¶¶ 73-77)

1. Requirements

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

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

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

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

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

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

B. Curriculum (CD ¶¶ 78-81)

1. Requirements

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

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

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

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

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

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

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

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

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

1. Requirements

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

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

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

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