

# **Third Quarterly Report of 2013 of the Independent Monitor for the Virgin Islands Police Department**



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Independent Monitors**



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# Executive Summary

This is the Third Quarterly Report of 2013 from the Office of the Independent Monitor (the “OIM” or the “Monitor”) for the United States Virgin Islands Police Department (the “VIPD” or the “Department”), covering the quarter ending on September 30, 2013.<sup>1</sup>

In the Third Quarter of 2013, the OIM’s Police Practices Experts conducted two week-long monitoring trips to the United States Virgin Islands (the “Territory”). During these trips, the Police Practices Experts spent time meeting with and providing technical assistance to VIPD personnel, observing Consent Decree related training, and reviewing closed investigation files and other police records. The assessments contained in this Report are primarily based on the Police Practices Experts’ observations and the Department’s quarterly Status Report, dated October 4, 2013 (“VIPD Report”). In addition, there were frequent communications and updates, telephonically and electronically, between the VIPD and the Police Practices Experts during the Third Quarter of 2013, as well as periodic telephone conferences between the VIPD, the United States Department of Justice (the “DOJ”), the Police Practices Experts, and the Monitors to discuss the VIPD’s efforts towards substantial compliance with the Consent Decree.

During the Third Quarter of 2013, the Parties filed a joint motion with the Court to extend the Consent Decree’s October 31, 2013 substantial compliance deadline for another two years. On October 1, 2013, after consultation with the OIM, the Parties submitted a revised action plan to the Court outlining the remaining steps that the Department must take to achieve substantial compliance. The Court’s decision regarding the extension is pending. The United States District Court for the District of the Virgin Islands (the “Court”) held a full day hearing with testimony on November 18, 2013, to assist the Court in reviewing the status of the VIPD’s progress towards achieving substantial compliance, and whether the deadlines for achieving substantial compliance should be extended.

Even if the Court agrees to extend the compliance deadline, the VIPD must overcome substantial obstacles, devote additional resources, and hold its personnel (at all levels) accountable in order to make a substantial compliance deadline of October 31, 2015 realistic. First, the VIPD needs to improve its internal auditing capacity and audit its own compliance with the Consent Decree. VIPD audits should document any instances where the Department has not complied with its policies, which includes identifying problems or

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<sup>1</sup> This Report references a limited number of events that occurred after September 30, 2013 to provide a current assessment of the VIPD’s compliance status.

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mistakes, the corrective action taken, and any discipline or other action taken against VIPD personnel who have not complied with Department policy. The VIPD should then report that information to the OIM. This process will enable the VIPD to demonstrate to the OIM (and the Court) that it has the ability to identify non-compliance with its policies and that it has the capacity to correct any issues.

The VIPD has made great strides finalizing policies and providing corresponding training (Phase 1 and 2 Compliance). However, the Department has generally been unable to demonstrate that VIPD personnel are consistently applying those policies and training in their policing (Phase 3 Compliance). In order to achieve Phase 3 Compliance, the VIPD should direct the Audit Unit to begin auditing the Department's compliance with each provision in the Consent Decree. As discussed below, although the VIPD's Audit Unit has existed (in name only) for more than a year, the Department only approved its Audit Policy during the Third Quarter of 2013. While certain working groups have undertaken audits relating to their respective areas of responsibility, that process has been ad hoc and inconsistent. The VIPD should empower the Audit Unit to do the work it was created to do.

Second, in each Quarterly Report the OIM provides recommendations to the VIPD to help the Department move towards substantial compliance, or, if not specifically required by the Consent Decree, to help strengthen the Department and bring it in line with generally accepted police practices. The VIPD, however, has done little to implement the OIM's suggestions, or even respond to them. For example, for many quarters, the OIM has recommended that the Training Division coordinate with the Chiefs, other command staff, and the Internal Affairs Bureau ("IAB") to ensure that problems identified in the field by the Department's Early Intervention Program ("EIP") are addressed in training. The Department, however, has not demonstrated to the OIM that this is being done. The VIPD should describe any efforts that it takes to implement the OIM's recommendations in future VIPD Reports.

Third, we have consistently observed varying levels of compliance with the Consent Decree across the Districts. We recognize the challenges associated with managing a police department based on three islands. However, that is no excuse for the VIPD's uneven delivery of police service. The VIPD should hold personnel (regardless of where they are stationed) to the same high standards. The VIPD's leadership (as they have done) should continue to emphasize that the VIPD is a single police department with a single organizational mission.

Finally, although the VIPD has made progress reporting uses of force and accepting citizen complaints, work remains with respect to the Department's investigation of these cases. For example, the Department has allowed several investigations into police involved shootings, including those with fatalities, to

linger incomplete for years; according to the Department's Reporting, Investigation and Review of Use of Force Policy, such investigations should be completed within 50 days by the IAB and 120 days by criminal investigators. The Department's failure in this regard is a critical deficiency that should be addressed immediately. As the OIM has stated repeatedly, the Department's use of force practices lie at the heart of the Consent Decree and the Department will not achieve substantial compliance with the Consent Decree until it complies with these policies by properly reporting and investigating uses of force.

Starting with this Report, the OIM provides Appendix A, a status update on (1) a number of serious use of force, officer misconduct, and citizen complaint investigations, and (2) investigations with no dispositions. During the Second Quarter of 2013, the OIM met with the Parties and agreed to provide this type of information in order to provide more visibility into the Department's ongoing investigations. The OIM will monitor these cases to evaluate whether the investigations complied with the Department's policies and generally accepted police practices. In future Reports, the OIM will provide further status updates about these investigations, and will add new cases as appropriate.

The Department did not achieve substantial compliance with any additional paragraphs during the Third Quarter of 2013. As previously reported in the First and Second Quarters of 2013, the VIPD has achieved substantial compliance with ¶¶ 31, 39, 40, 42, 47, 50, 52, 53, 62, 64, and 70, largely based on redefining the parameters of compliance so as to only require the development of policies or protocols for those paragraphs. The OIM will evaluate the Department's consistent application of these provisions under ¶¶ 100 and 101 of the Consent Decree. In addition, the Department's obligation to provide training for the policies and protocols required by ¶¶ 31, 39, 40, 47, 50, 52, 53, 62, 64 and 70 will be assessed in connection with the specific training requirements contained throughout the Consent Decree and ¶ 75.

At the beginning of the Fourth Quarter of 2013, the OIM circulated a "Data Sources Chart" to the Parties describing, in detail, the type of documents that the VIPD should provide to the OIM to help demonstrate compliance with each Consent Decree provision. The OIM intends to use the Data Sources Chart to evaluate the VIPD's and the Territory's compliance with the Consent Decree beginning in the First Quarter of 2014.

Finally, in response to comments from the Parties, the OIM is making progress towards publishing our Quarterly Reports more quickly. However, the OIM spends a significant amount of time each quarter interpreting the VIPD's quarterly Status Reports in order to incorporate their substance into our Quarterly Reports. This is not always easy to do because of the quality and substance of the VIPD's Status Reports. For each Consent Decree provision,

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the VIPD should clearly identify the steps that it took towards compliance during the prior quarter; any obstacles that the VIPD encountered; proposed solutions to overcome any obstacles; and whether the VIPD contends that it has complied. We recognize that the VIPD relies on the working groups to provide much of the information for each quarterly Status Report. As such, we also encourage the working groups to submit clearly written and organized work product to the Compliance Coordinator and Compliance Manager; to the extent that the Compliance Coordinator and Compliance Manager are not satisfied with the work product that they receive, they should promptly return it to the working groups for revision. The Commissioner (along with the Assistant Commissioner, Chiefs, and Deputy Chiefs) should also carefully review and approve each quarterly Status Report before it is provided to the OIM.



# Introduction

This is the Third Quarterly Report of 2013 from the Office of the Independent Monitor (the “OIM” or the “Monitor”) for the United States Virgin Islands Police Department (the “VIPD” or the “Department”), covering the quarter ending on September 30, 2013.

The OIM was established in January 2010 to monitor compliance by the United States Virgin Islands (the “Territory”) and the VIPD with the Consent Decree entered by the United States District Court for the District of 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’s compliance with and implementation of each substantive provision” of the Consent Decree.<sup>2</sup>

The Consent Decree reflects the agreement between the Territory, 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 Territory and the VIPD violated 42 U.S.C. § 14141 by engaging “in a pattern or practice of excessive force by Officers of the Virgin Islands Police Department and by the failure to adequately train, supervise, investigate, and discipline Officers.”<sup>3</sup>

The Parties entered into the Consent Decree “to promote police integrity and prevent conduct that deprives persons of rights, privileges, or immunities secured or protected by the Constitution or the laws of the United States.”<sup>4</sup> 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 Parties subsequently filed a timetable on

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<sup>2</sup> CD ¶ 96. This Quarterly Report, along with the OIM’s prior reports, is available on the internet at <http://www.policemonitor.org/VI/VIindex.html>.

<sup>3</sup> CD ¶ 6; *see also* Complaint, *United States v. The Territory of the Virgin Islands*, No. 3:08-CV-00158-CVG-GWB (D.V.I. 2008).

<sup>4</sup> CD ¶ 3.

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November 24, 2010 that 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 for the VIPD to submit force-related policies to the DOJ for approval. The VIPD successfully met nearly every policy submission deadline. However, by the end of the Third Quarter of 2011, the VIPD had missed all of the remaining deadlines for substantial compliance established by the Court-ordered Consent Decree Timetable (deadlines that the VIPD proposed and committed to meeting). 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, and 63-66 by September 15, 2011. To date, the VIPD has complied with ¶¶ 31, 39, 40, 42, 47, 50, 52, 53, 62, and 70.

In January 2011, to encourage compliance within the timeframe of the Consent Decree Timetable, the then Commissioner convened a Consent Decree Summit on St. Thomas on January 3 and 4, 2011 (the “Summit”).<sup>5</sup> At the Summit, the Commissioner appointed senior VIPD personnel to lead, and ultimately be held accountable for, different aspects of the Consent Decree—Use of Force (Chief of the St. Croix District),<sup>6</sup> Citizen Complaint Process (Chief of the St. Thomas/St. John District),<sup>7</sup> Management and Supervision (Deputy Chief of St. Thomas), and Training (Director of Training). The 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.<sup>8</sup>

During the First Quarter of 2013, the OIM began assessing the VIPD’s compliance with the Consent Decree in 3 phases—Phase 1: Policy; Phase 2:

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<sup>5</sup> The OIM discussed the Summit in detail in the Fourth Quarterly Report of 2010 and the First Quarterly Report of 2011. For more information about the Summit, including objectives and participants, see the *Consent Decree Summit Appendix B* at the end of those Reports.

<sup>6</sup> Following on-duty injuries sustained by the Chief of the St. Croix District during the Third Quarter of 2012, the Deputy Chief of St. Croix assumed responsibility as Acting Chief of the St. Croix District and Acting Leader of the Use of Force working group. The Acting Chief appointed a Captain as his point person, and she has recruited new members and commenced regular meetings of the working group.

<sup>7</sup> The Citizen Complaint Process working group is now led by the Deputy Chief of St. John.

<sup>8</sup> Memorandum from the 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. During the Third Quarter of 2013, the Police Practices experts regularly exchanged emails and telephone calls with their counterparts and met in person during the quarter’s monitoring trips.

Training; Phase 3: Consistent Application. Phase 1 assesses whether the VIPD has issued policies reflecting the Consent Decree requirements. Phase 2 assesses whether the VIPD has provided initial and ongoing training (e.g., annual in-service training, Roll and Commanders Call training) on these policies. Phase 3 assesses whether the VIPD demonstrates consistent application of the Department's policies in its everyday policing activities. Certain phases may not be applicable to all Consent Decree requirements. For example, the provisions relating to training (§§ 75-79) primarily concern the training process, rather than training on a particular policy. Therefore, Phase 1 will not be applicable to those provisions. Moreover, where Phase 1 is not applicable because there is no required policy, Phase 2 will focus on steps towards execution, including training. As previously reported, the VIPD achieved substantial compliance with § 42 of the Consent Decree during the First Quarter of 2013.

Beginning during the Second Quarter of 2013 and based on extensive discussions with and input from the VIPD, the Virgin Islands Attorney General's Office ("VIAG"), and the DOJ, the OIM modified its assessment criteria for the Consent Decree paragraphs that only require the Department to develop a policy or protocol. Under this approach, the VIPD has achieved substantial compliance with §§ 31, 39, 40, 47, 50, 52, 53, 62, 64, and 70 because it has adopted relevant policies or protocols. Because the Consent Decree requires the VIPD to "implement . . . all provisions of this Agreement that involve the continuation of current VIPD policies, procedures, and practices[.]" the OIM will evaluate the Department's consistent application of its policies and protocols (Phase 3, described above) under §§ 100 and 101 of the Consent Decree. In addition, the Department's obligation to provide training for its policies and protocols is addressed in connection with specific training requirements throughout the Consent Decree and § 75. The VIPD did not achieve substantial compliance with any additional paragraphs during the Third Quarter of 2013.

In the Third Quarter of 2013, the Police Commissioner appointed Department veteran Thomas Hannah as Assistant Commissioner. The OIM congratulates Assistant Commissioner Hannah on his appointment and looks forward to working with him on the Department's efforts to achieve substantial compliance with the Consent Decree.

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## Status of Substantial Compliance

<u>Consent Decree ¶</u>	<u>Phase 1</u>	<u>Phase 2</u>	<u>Phase 3</u>	<u>Compliance Status</u>
<b>31</b>	Satisfied	N/A	N/A	Substantial Compliance
<b>32</b>	Satisfied	Satisfied	Not Satisfied	Not in Substantial Compliance
<b>33</b>	Satisfied	Satisfied	Not Satisfied	Not in Substantial Compliance
<b>34</b>	Satisfied	Satisfied	Not Satisfied	Not in Substantial Compliance
<b>35</b>	Satisfied	Satisfied	Not Satisfied	Not in Substantial Compliance
<b>36</b>	Satisfied	Satisfied	Not Satisfied	Not in Substantial Compliance
<b>37</b>	Satisfied	Satisfied	Not Satisfied	Not in Substantial Compliance
<b>38</b>	Satisfied	Satisfied	Not Satisfied	Not in Substantial Compliance
<b>39</b>	Satisfied	N/A	N/A	Substantial Compliance
<b>40</b>	Satisfied	N/A	N/A	Substantial Compliance
<b>41</b>	Satisfied	Satisfied	Not Satisfied	Not in Substantial Compliance

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<b><u>Consent Decree ¶</u></b>	<b><u>Phase 1</u></b>	<b><u>Phase 2</u></b>	<b><u>Phase 3</u></b>	<b><u>Compliance Status</u></b>
<b>42</b>	Satisfied	N/A	N/A	Substantial Compliance
<b>43</b>	Satisfied	Satisfied	Not Satisfied	Not in Substantial Compliance
<b>44</b>	Satisfied	Satisfied	Not Satisfied	Not in Substantial Compliance
<b>45</b>	Satisfied	Satisfied	Not Satisfied	Not in Substantial Compliance
<b>46</b>	Satisfied	Satisfied	Not Satisfied	Not in Substantial Compliance
<b>47</b>	Satisfied	N/A	N/A	Substantial Compliance
<b>48</b>	Satisfied	Satisfied	Not Satisfied	Not in Substantial Compliance
<b>49</b>	Satisfied	Satisfied	Not Satisfied	Not in Substantial Compliance
<b>50</b>	Satisfied	N/A	N/A	Substantial Compliance
<b>51</b>	Satisfied	Satisfied	Not Satisfied	Not in Substantial Compliance
<b>52</b>	Satisfied	N/A	N/A	Substantial Compliance
<b>53</b>	Satisfied	N/A	N/A	Substantial Compliance

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<b><u>Consent Decree ¶</u></b>	<b><u>Phase 1</u></b>	<b><u>Phase 2</u></b>	<b><u>Phase 3</u></b>	<b><u>Compliance Status</u></b>
<b>54</b>	Satisfied	Satisfied	Not Satisfied	Not in Substantial Compliance
<b>55</b>	Satisfied	Satisfied	Not Satisfied	Not in Substantial Compliance
<b>56</b>	Satisfied	Satisfied	Not Satisfied	Not in Substantial Compliance
<b>57</b>	Satisfied	Satisfied	Not Satisfied	Not in Substantial Compliance
<b>58</b>	Satisfied	Satisfied	Not Satisfied	Not in Substantial Compliance
<b>59</b>	Satisfied	Satisfied	Not Satisfied	Not in Substantial Compliance
<b>60</b>	Satisfied	Satisfied	Not Satisfied	Not in Substantial Compliance
<b>61</b>	Satisfied	Satisfied	Not Satisfied	Not in Substantial Compliance
<b>62</b>	Satisfied	N/A	N/A	Substantial Compliance
<b>63</b>	Satisfied	Satisfied	Not Satisfied	Not in Substantial Compliance
<b>64</b>	Satisfied	N/A	N/A	Substantial Compliance

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<b><u>Consent Decree ¶</u></b>	<b><u>Phase 1</u></b>	<b><u>Phase 2</u></b>	<b><u>Phase 3</u></b>	<b><u>Compliance Status</u></b>
<b>65</b>	Satisfied	Satisfied	Not Satisfied	Not in Substantial Compliance
<b>66</b>	Satisfied	Satisfied	Not Satisfied	Not in Substantial Compliance
<b>67</b>	N/A	N/A	N/A	N/A
<b>68</b>	N/A	N/A	N/A	N/A
<b>69</b>	Satisfied	Satisfied	Not Satisfied	Not in Substantial Compliance
<b>70</b>	Satisfied	N/A	N/A	Substantial Compliance
<b>71</b>	Satisfied	Satisfied	Not Satisfied	Not in Substantial Compliance
<b>72</b>	Satisfied	Satisfied	Not Satisfied	Not in Substantial Compliance
<b>73</b>	N/A	Not Satisfied	Not Satisfied	Not in Substantial Compliance
<b>74</b>	N/A	Not Satisfied	Not Satisfied	Not in Substantial Compliance
<b>75</b>	N/A	Satisfied	Not Satisfied	Not in Substantial Compliance
<b>76</b>	N/A	Satisfied	Not Satisfied	Not in Substantial Compliance

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<b><u>Consent Decree ¶</u></b>	<b><u>Phase 1</u></b>	<b><u>Phase 2</u></b>	<b><u>Phase 3</u></b>	<b><u>Compliance Status</u></b>
<b>77</b>	N/A	Satisfied	Not Satisfied	Not in Substantial Compliance
<b>78</b>	N/A	Satisfied	Not Satisfied	Not in Substantial Compliance
<b>79</b>	N/A	Not Satisfied	Not Satisfied	Not in Substantial Compliance
<b>80</b>	Satisfied	Satisfied	Not Satisfied	Not in Substantial Compliance
<b>81</b>	Satisfied	Satisfied	Not Satisfied	Not in Substantial Compliance



# Compliance Assessment

This section of the Report describes the VIPD's compliance efforts with respect to each of the substantive provisions of the Consent Decree,<sup>9</sup> as well as monitoring activities by the OIM's Police Practices Experts during the quarter. The organization of this section of the Report parallels the organization of the Consent Decree. Specifically, we provide a *status and assessment* discussion that describes and analyzes the VIPD's progress toward achieving substantial compliance with the Consent Decree's requirements.<sup>10</sup> We include *recommendations* to assist the VIPD in achieving full and timely implementation of the Consent Decree's requirements.<sup>11</sup>

## Use of Force Policies

### Joint Action Plan Requirements

Joint Action Plan Requirements	Status
By <b>November 30, 2012</b> , implement system to ensure all staff are trained on policies (i.e., a tracking system) and periodically test proficiency with the policies.	<b>Not satisfied.</b> The VIPD did not provide the OIM with documentation that the Department has such a tracking system.
By <b>November 30, 2012</b> , ensure that the Virgin Islands Attorney General's Office, the Training Working Group, and the Use of Force Working Group review all use of force policies.	<b>Not satisfied.</b> The Use of Force working group reported during the First Quarter of 2013 that it planned to review one use of force policy every two weeks. The working group repeatedly said that it would provide the OIM with completed review forms, but the OIM never received any. Later in the quarter, the Department determined that a review protocol was needed to establish a uniform procedure for reviewing policies before it could proceed further. The VIPD drafted a Standard Operating Procedure ("SOP") to "facilitate a systematic review process for the

<sup>9</sup> A summary of the Consent Decree requirements is excerpted at Appendix A. A copy of the full text of the Consent Decree is available at: [http://www.justice.gov/crt/about/spl/documents/VIPD\\_CD\\_03-23-09.pdf](http://www.justice.gov/crt/about/spl/documents/VIPD_CD_03-23-09.pdf).

<sup>10</sup> The Consent Decree provides that "[t]he Monitor shall issue quarterly written, public reports detailing the Territory of the Virgin Islands' compliance with and implementation of each substantive provision of [the] Agreement." CD ¶ 96.

<sup>11</sup> CD ¶ 85.

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	<p>annual review of all department policies, and particularly use of force and other force related polices....” The SOP was submitted to the Policies and Procedures Committee (the “Committee”) during the First Quarter of 2013 for its review. After reviewing the SOP, the Committee submitted it to the Commissioner for his review during the Third Quarter of 2013. The Commissioner signed the SOP during the Fourth Quarter of 2013.</p>
<p>By <b>November 30, 2012</b>, conduct Use of Force reviews on a quarterly basis.</p>	<p><b>Not satisfied.</b> The OIM has learned that the VIPD has a command level review process for individual force cases in each District. However, the VIPD does not conduct quarterly reviews of force cases for patterns of misconduct, weaknesses in training, or other issues related to use of force. In addition, the Department has not provided the OIM with any documentation from the command level review process.</p>
<p>By <b>November 30, 2012</b>, VIPD will provide DOJ with an action plan for achieving sufficient numbers of supervisors or outlining how it intends to use existing supervisors to implement the polices and this action plan. The plan will include an implementation date subject to the agreement of the parties.</p>	<p><b>Satisfied, but additional work needed.</b> On December 31, 2012, the DOJ provided comments on the VIPD’s action plan. Among other things, the DOJ sought clarification on what, if anything, the VIPD plans to do if there is a lack of funding for new Supervisors. Recognizing the Department’s fiscal constraints, the VIPD should address that possibility and plan accordingly.</p>

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<p>By <b>November 30, 2012</b>, conduct inspections of personnel with report on a quarterly basis.</p>	<p><b>Not satisfied.</b> Documentation for inspections conducted in the St. Croix District following training was provided to the OIM during the Second Quarter of 2013. The VIPD has not trained personnel, conducted inspections, or provided similar documentation for the St. Thomas/St. John District.</p>
<p>By <b>January 31, 2013</b>, competency-based training of officers and supervisors on remaining policies</p> <ul style="list-style-type: none"> <li>3.8 Off-Duty Policy</li> <li>3.9 Vehicle Pursuit Policy</li> <li>3.10 Spike Strip</li> <li>3.12 Tactical Operations</li> <li>3.13 Sniper Operations</li> </ul>	<p><b>Not satisfied.</b> The VIPD has provided training on the Off-Duty Policy and Sniper Operations and train-the-trainer training on the Vehicle Pursuit Policy and Spike Strip. The VIPD provided in-service training on additional policies during the Second and Third Quarters of 2013. The VIPD has not provided the OIM with a report about these policies. Moreover, recent training does not appear to correspond with improved compliance, especially as it pertains to off-duty activities.</p>
<p>Refresher training on policies ongoing, through documented, periodic in-service and Roll Call/Commanders Call training. By <b>January 31, 2013</b>, incorporate competency-based training on policies into Police Academy.</p>	<p><b>Not satisfied.</b> Although the VIPD has provided the OIM with attendance sheets and brief descriptions of Roll Call and Commanders Call training, the OIM needs more detailed information about the subject matter being covered. Likewise, the OIM cannot determine whether the VIPD has adequately incorporated competency-based training on policies into the Police Academy because the VIPD has not provided the OIM with a full set of lesson plans and related training materials.</p>
<p>By <b>January 31, 2013</b>, execute any contract(s) necessary to train supervisors or others responsible for conducting ballistic or crime scene analyses. By <b>March 31, 2013</b>,</p>	<p><b>Not satisfied.</b> The VIPD has a contract with an outside vendor to analyze ballistics, but there is currently a backlog. Additionally, the VIPD has not provided any</p>

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conduct the training.	documentation that it has trained VIPD personnel on ballistics. There is a backlog of use of force investigations that cannot be resolved because of outstanding ballistics reports. The VIPD has allowed several investigations into police-involved fatal shootings to linger for years; according to the Department's Reporting, Investigation and Use of Force Policy, investigations should be completed within 50 days by the IAB and 120 days by criminal investigators.
By <b>June 30, 2013</b> , in consultation with DOJ, implement audit tools to ensure staff are complying with the policies (i.e., review of sample of 1As and arrest reports).	<b>Not Satisfied.</b> The VIPD continued to work on its audit tools during the Second and Third Quarters of 2013. The VIPD received DOJ approval for its audit tools during the Fourth Quarter of 2013.
By <b>June 30, 2013</b> , develop and implement a process for identifying personnel who continually fail to report uses of force or otherwise fail to follow the policy and provide and document discipline and/or remedial training.	<b>Not satisfied.</b> The VIPD has started to conduct audits relating to the Department's use of force practices, but has not provided the OIM with documentation showing that it has consistently implemented such a process in both Districts.
By <b>June 30, 2013</b> , ensure that audits audit the timeliness of completion of use of force investigations.	<b>Not satisfied.</b> The VIPD has started to conduct audits relating to the timely completion of use of force investigations, but has not provided the OIM with documentation showing that it has consistently implemented such a process in both Districts.
By <b>June 30, 2013</b> , in consultation with DOJ, develop and implement a process for identifying supervisors who neglect their responsibilities to investigate as required by policy and provide and document discipline and/or remedial training.	<b>Not satisfied.</b> The VIPD did not provide the OIM with documentation showing that the Department has implemented such a process.
By <b>June 30, 2013</b> , in consultation with DOJ, implement audit tools to ensure staff are complying with the policies (i.e., review of firearm	<b>Not Satisfied.</b> The VIPD continued to work on its audit tools during the Second and Third Quarters of 2013. The VIPD received DOJ approval for

discharge reporting).	its audit tools during the Fourth Quarter of 2013.
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**31. The VIPD will review and revise its use of force policies as necessary to: a) define terms clearly; b) define force as that term is defined in this Agreement; c) incorporate a use of force model that teaches disengagement, area containment, surveillance, waiting out a subject, summoning reinforcements or calling in specialized units as appropriate responses to a situation; d) advise that, whenever possible, individuals should be allowed to submit to arrest before force is used; e) reinforce that the use of excessive force will subject officers to discipline, possible criminal prosecution, and/or civil liability; f) ensure that sufficient less lethal alternatives are available to all patrol officers; and g) explicitly prohibit the use of choke holds and similar carotid holds except where deadly force is authorized. Once the DOJ has reviewed and approved these policies, the VIPD shall immediately implement any revisions.**

**Compliance Assessment:**

The Department has achieved Phase 1 compliance because it has issued policies in compliance with ¶ 31 of the Consent Decree. Because ¶ 31 of the Consent Decree only requires the Department to develop a policy, Phase 2 and 3 are not applicable. Therefore, the VIPD is in substantial compliance with ¶ 31 of the Consent Decree.

**32. The VIPD will require all uses of force to be documented in writing. The use of force report form will indicate each and every type of force that was used, and require the evaluation of each type of force. Use of force reports will include a narrative description of the events preceding the use of force, written by a supervisor or by the designated investigative unit. Use of force reports also will include the officer(s)' narrative description of events and the officer(s)' statement. Except in cases of use of force involving the lowest level of force as defined in VIPD policy as approved by DOJ, the officer's statement shall be audio- or videotaped.**

**Compliance Assessment:**

The Department has achieved Phase 1 and 2 compliance because it has issued policies in compliance with ¶ 32 of the Consent Decree and has provided related training, but it has not achieved Phase 3 compliance as discussed below. Therefore, the VIPD is not yet in substantial compliance with ¶ 32 of the Consent Decree.

**VIPD Report:**

The VIPD reports that Department personnel are required to document all uses of force using the Response to Resistance Report (“RRR”) form. The VIPD also reports that it uses IAPro to identify personnel who continually fail to report uses of force or comply with VIPD policy. During the Third Quarter of 2013, the VIPD (using IAPro) identified use of force and citizen complaint investigations involving alleged violations of Department policy, and disseminated a report identifying those investigations to senior VIPD personnel. According to the VIPD, IAPro has been configured to provide “alerts” about potential misconduct to supervisory personnel.

The VIPD also reports that it is developing an “internal self assessment system” in which the working groups will conduct inspections, reviews, and/or audits relating to their respective areas of responsibility.

**OIM Report:**

The VIPD has issued the Use of Force Policy, Reportable Use of Force Policy, and the Reporting, Investigation and Review of Use of Force Policy in partial satisfaction of ¶ 32 of the Consent Decree.

During the Third Quarter of 2013, the VIPD provided the Police Practices Experts with only 3 closed use of force investigations and 1 closed citizen complaint investigation for review. Despite requesting that the VIPD electronically forward all completed investigations to the OIM for review, the OIM learned during the Third Quarter of 2013 that the VIPD was unclear about its responsibility. The confusion, however, has been resolved and the VIPD forwarded completed use of force and serious misconduct investigations to the OIM during the Fourth Quarter of 2013. In addition, as reported during the previous quarter, the VIPD and the Police Practices Experts are collaborating to allow remote access to IAPro and Blue Team, which will provide the Police Practices Experts with real-time access to closed investigations.

The OIM’s Police Practices Experts reviewed the four closed investigations referenced above to help evaluate the Department’s use of force reporting practices. Throughout the Report, certain statistics may be calculated from a total number of less than 4 because: (1) the Police Practices Experts were unable to draw certain conclusions based on the information included in the investigative files; (2) a Consent Decree requirement was not applicable to all investigations, in which case we used the total number of applicable investigations; or (3) the particular requirement was not assessed during the Third Quarter of 2013 by the Police Practices Experts. Because of the limited sample size, the statistics contained in this report may not ultimately prove to be representative of the VIPD’s performance overall.

Notwithstanding these limitations, the statistics contained in this Report still provide insight into the Department's progress.

For example, based on the Police Practices Experts' review of the closed use of force investigations, the OIM concluded that VIPD personnel reported force using an RRR in 3 out of 3 of the closed investigations reviewed during the Third Quarter of 2013; Supervisors described the events preceding the use of force and evaluated the appropriateness of each type of force used in 2 out of 3 of the investigation files; 3 out of 3 of the investigation files included the Officer's description of events preceding the use of force; the RRRs in 3 out of 3 of the investigation files indicated the type of force used; and 1 out of 3 of the investigations were completed within the timeline required under Department policy.

Although the Department's use of force reporting practices have generally improved over the past several quarters, the VIPD continues to struggle with completing investigations within the required timeline. The VIPD has acknowledged that it needs to do better in this regard. For example, on July 10, 2013, the Deputy Chief for the St. Croix District sent a memorandum to all Commanders, Bureau Heads, and Unit and Section Supervisors emphasizing the importance of completing reports on a timely basis, and stating that delinquent Officers (along with their Supervisors) would be disciplined for failing to do so. The Deputy Chief directed that all police reports should be completed by the end of an Officer's shift. The Deputy Chief also provided delinquent Officers with a ten day grace period to submit any outstanding reports, and stated that he would hold violators accountable. We note that the Deputy Chief for St. John previously circulated a similar memorandum in St. John. The OIM commends the VIPD for taking these positive steps. However, in order to achieve substantial compliance, the VIPD must follow through and hold personnel accountable if they fail to complete reports on a timely basis. The VIPD should report on whether the Deputy Chiefs' efforts to increase compliance were successful and whether corrective action or discipline was taken against any VIPD personnel for non-compliance.

The VIPD reviewed a completed use of force investigation during the Third Quarter of 2013 that highlighted several recurring deficiencies that we have seen in other use of force investigations.<sup>12</sup> In the underlying incident, an off-duty Officer ("Officer 1") identified a suspect in a robbery, ordered him to stop, and ultimately forced him to the ground (with assistance from a second Officer ("Officer 2")) after the suspect ignored Officer 1's order and attempted to walk away. After the suspect was arrested, a third Officer ("Officer 3") transported the suspect to the Zone because a crowd had reportedly formed outside the bar where the incident took place. Five days after the incident (RRRs are supposed to be completed before the end of an Officer's tour), Officer

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<sup>12</sup> See FX2013-0028.

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2 submitted a RRR stating that he used “soft hands” to “take down” the suspect. Following his arrest, the suspect provided a statement in which he alleged that the police beat him.

As discussed further below, the VIPD’s investigation was deficient in several respects: (1) Officer 2 filed a RRR five days after the incident took place; (2) the investigation did not address how Officer 1 came into contact with the suspect (was Officer 1 “moonlighting” at the bar, and if so, was it authorized, was he a customer at the bar, and if so, had he consumed alcohol, etc.); (3) the investigation did not address whether Officer 1 complied with the Off-Duty Official Action Policy; (4) a Supervisor never responded to the scene to conduct an investigation; (5) Officer 3 never provided a statement about the suspect’s injuries, if any, or the crowd that had formed; and (6) the VIPD never canvassed the crowd or conducted any civilian interviews.

**Recommendations:**

Under certain circumstances the OIM can require the VIPD to reopen use of force and citizen complaint investigations that are incomplete or inadequate.<sup>13</sup> While the VIPD may not be required to reopen the use of force investigation described above because it occurred too long ago, the VIPD should use the investigation as a learning opportunity to understand what went wrong and how to do better in the future.

The Department should also seek to improve the timeliness of its use of force reporting. Under the Reporting, Investigation and Review of Use of Force Policy, VIPD personnel are required to report uses of force, to the extent practicable, before the end of the tour during which force was used. Although the VIPD has improved its use of force reporting, VIPD personnel continue to report force on a delayed basis. Delays in the reporting process frustrate use of force investigations by effectively shortening the 50-day statute of limitations period and potentially rendering evidence stale or unavailable.

As we have stated previously, the full and timely reporting of force is a cornerstone requirement of the Consent Decree. The Use of Force working group, Commissioner, Assistant Commissioner, Chiefs, and Deputy Chiefs should continue to audit Arrest Reports and Form 1As to determine the extent to which force is being reported across the Districts. Based on those audits, the VIPD should develop a process for identifying personnel who continually fail to report the use of force. Once those individuals are identified, the working group should work with the Chiefs, Deputy Chiefs, the IAB, and the Training Division to provide remedial training or other corrective action, including disciplinary sanctions, as necessary. All audits should be documented and shared with the Compliance Coordinator and the OIM.

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<sup>13</sup> See CD ¶ 87.



**33. Officers shall notify their supervisors following any use of force [or]<sup>14</sup> upon the receipt of an allegation of excessive force. Except in uses of force involving the lowest level of force as defined in VIPD policy as approved by DOJ, supervisors will respond to the scene, examine the subject for injury, interview the subject for complaints of pain, and ensure that the subject received needed medical attention.**

**Compliance Assessment:**

The Department has achieved Phase 1 and 2 compliance because it has issued policies in compliance with ¶ 33 of the Consent Decree and has provided related training, but it has not achieved Phase 3 compliance as discussed below. Therefore, the VIPD is not yet in substantial compliance with ¶ 33 of the Consent Decree.

**VIPD Report:**

The VIPD reports that it has adopted policies relating to ¶¶ 31 - 41 of the Consent Decree and provided related training through in-service, Roll Call, and Commanders Call sessions. The VIPD reports that it previously drafted an Audit Plan, which it resubmitted to the OIM during the Third Quarter of 2013 for comments. The Audit Plan identifies audit objectives and the methods that the Department will use to carry out audits.

The VIPD also reports that it is developing an Audit Unit to test whether VIPD personnel are complying with Consent Decree-related policies. During the Third Quarter of 2013, the Department finalized an Audit and Inspection Policy to guide the Audit Unit's work. The Department reports that training on the Audit and Inspection Policy was scheduled to take place in the St. Thomas/St. John District from October 14-18, 2013 and in the St. Croix District from October 21-25, 2013; those trainings took place as scheduled. Based on the course description, the training was supposed to cover the following subject areas: introduction to the inspection and auditing process; developing audit and inspection plans, audit guidelines, and standards; conducting law enforcement audits, assessments, and organizational reviews; preparing and disclosing inspections; and auditing and preparing written reports with professional recommendations and solutions. Additionally, as part of the VIPD's "self assessment strategy," the VIPD reports that each working group is expected to conduct inspections or audits relating to its respective area of responsibility.

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<sup>14</sup> During the First Quarter of 2013 the Parties jointly filed a motion to correct or amend the Court's Order, dated December 13, 2012, by inserting "or" into the first sentence of ¶ 33 of the Consent Decree. The Court granted the Parties' motion.

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**OIM Report:**

The Police Practices Experts reviewed 3 completed use of force investigation files during the Third Quarter of 2013 to evaluate the Department's use of force reporting practices. Among other things, that review showed that Officers timely notified Supervisors following a use of force in 3 out of 3 of the investigations, and that Supervisors responded to the scene and conducted an investigation in 1 out of 3 of the investigations.

While Officers appear to notify Supervisors about uses of force on a consistent basis, Supervisors are not consistently responding to the scene to conduct investigations. The OIM has raised this issue with the VIPD. The VIPD has explained that its Supervisors are stretched too thin and cannot respond to the scene of each use of force. As such, according to the VIPD, Supervisors are forced to make triage-like decisions about whether to respond to the scene of a particular use of force or carry out other aspects of their job. However, the VIPD has never explained on a case-by-case basis why a Supervisor was unable to respond to the scene of a particular use of force. For example, why is it that a Supervisor did not respond to the scene of the use of force described in ¶ 32?

The VIPD has informed the OIM that it intends to hold promotional examinations in January 2014. We are hopeful that the VIPD will be able to add a significant number of additional Supervisors to its ranks based on those examinations because the VIPD currently has too few Supervisors. The Territory (which is a party to the Consent Decree) and its governing authority (the legislature and the governor) need to take responsibility for this issue and provide the VIPD with the funding necessary to provide adequate supervision. The Police Practices Experts have repeatedly advised the VIPD that when Supervisors assume command and control of an incident, there are typically fewer citizen complaints and less force is employed, yielding clear benefits to the VIPD and the public. Without adding additional qualified Supervisors, the OIM does not believe that the VIPD will be able to achieve and/or maintain substantial compliance.

**Recommendations:**

The VIPD should proceed with its plan to hold promotional examinations in January 2014. In order to promote the best people, the Department should encourage high performing personnel who are eligible to take the promotional exams. Once the examinations are administered and the results determined, the VIPD should promptly proceed to promotions.

For the time being, however, the VIPD should do its best to ensure that Supervisors are responding to the scene of use of force incidents as required by VIPD policy. To the extent that a Supervisor is unable to respond to a

particular use of force, the VIPD should document the circumstances that prevented a Supervisor from responding. That documentation will help the Department assess its supervisory needs and hold Supervisors accountable for their decisions. Responding to uses of force should be a high priority for Supervisors, and very few other duties will justify a Supervisor's absence. Moreover, even though a particular Supervisor's absence may be understandable under the circumstances, it will not excuse the Department from complying with this provision. It is the VIPD's and the Territory's obligation under the Consent Decree to provide adequate supervision, even if that means allocating additional funding for that purpose.

The Use of Force working group, Commissioner, Assistant Commissioner, Chiefs, and Deputy Chiefs should audit whether Officers are notifying their Supervisors following any use of force or allegation of excessive use of force. They should also audit, among other things required by the Consent Decree, whether Supervisors are responding to the scene of a use of force in a timely manner, examining the subject for injury, interviewing the subject for complaints of pain, and ensuring that the subject receives needed medical attention. All audits should be documented and shared with the Compliance Coordinator and the OIM.

**34. Supervisors, or designated investigating officers or units, will review, evaluate, and document each use of force, and will complete the narrative description section of the use of force report. The narrative description will include a precise description of the facts and circumstances that either justify or fail to justify the officer's conduct. As part of this review, the supervisor or designated investigating officer/unit will evaluate the basis for the use of force, and determine whether the officer's actions were within VIPD policy. An officer who used force during the incident, whose conduct led to an injury, or who authorized conduct leading to the use of force or allegation of excessive force, or who was present during the incident, will not be eligible to review of investigate the incident.**

#### **Compliance Assessment:**

The Department has achieved Phase 1 and 2 compliance because it has issued policies in compliance with ¶ 34 of the Consent Decree and has provided related training, but it has not achieved Phase 3 compliance as discussed below. Therefore, the VIPD is not yet in substantial compliance with ¶ 34 of the Consent Decree.

#### **VIPD Report:**

As reported above, the VIPD has adopted policies relating to ¶¶ 31 - 41 of the Consent Decree and provided corresponding training through in-service,

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Roll Call, and Commanders Call sessions. The VIPD also reports that it is developing an Audit Unit to test whether VIPD personnel are complying with Consent Decree-related policies. The VIPD will provide additional information about its audits in future quarterly Status Reports.

**OIM Report:**

Based on the Police Practices Experts' review of completed use of force investigations during the Third Quarter of 2013, we concluded that Supervisors included a narrative describing the facts and circumstances that justified or failed to justify the Officer's conduct in 3 out of 3 of the investigations. In 2 out of 3 of the completed use of force investigations, Supervisors evaluated the basis for the use of force; in 3 out of 3 of the investigations, Supervisors determined whether the Officer's actions were within VIPD policy; and 3 out of 3 of the investigations were conducted by Supervisors who were not directly involved in the use of force incident.

Despite improvements in the VIPD's investigations of uses of force, the VIPD continues to commit certain errors, including failing to complete investigations in the timeframe required by Department policy, failing to collect all evidence, failing to interview all witnesses, or failing to report force.

**Recommendations:**

The Use of Force working group, Commissioner, Assistant Commissioner, Chiefs, and Deputy Chiefs should audit whether Supervisors are conducting adequate use of force investigations. All audits should be documented and shared with the Compliance Coordinator and the OIM. They should also audit Form 1As and Arrest Reports to determine the extent to which force is being reported across the Districts. Based on these audits, the VIPD should develop a process for identifying personnel who continually fail to report uses of force. Once those individuals are identified, the working group should work in concert with the Chiefs, Deputy Chiefs, the IAB, and the Training Division to provide remedial training, or other corrective action, including disciplinary sanctions, as necessary. The Use of Force working group's audits should also include a review of investigations by Supervisors or Commanders whose force reviews have previously failed to meet the requirements of ¶ 34.

**35. The parties agree that it is improper interview procedure during use of force investigations to ask officers or other witnesses leading questions that improperly suggest legal justifications for the officer's conduct when such questions are contrary to appropriate law enforcement techniques. In each review/investigation, the VIPD will consider all relevant evidence including circumstantial, direct and physical evidence, as appropriate, and make credibility determinations, if feasible. The VIPD will make all reasonable efforts to resolve material inconsistencies between witness**

**statements. The VIPD will train all of its supervisors and officers assigned to conduct use of force investigations in conducting use of force investigations, including in the factors to consider when evaluating credibility.**

**Compliance Assessment:**

The Department has achieved Phase 1 and 2 compliance because it has issued policies in compliance with ¶ 35 of the Consent Decree and has provided related training, but it has not achieved Phase 3 compliance as discussed below. Therefore, the VIPD is not yet in substantial compliance with ¶ 35 of the Consent Decree.

**VIPD Report:**

As reported above, the VIPD has adopted policies relating to ¶¶ 31 - 41 of the Consent Decree and provided corresponding training through in-service, Roll Call, and Commanders Call sessions. The VIPD also reports that it is developing an Audit Unit to test whether VIPD personnel are complying with Consent Decree-related policies. The VIPD will provide additional information about its audits in future quarterly Status Reports.

**OIM Report:**

The OIM was not able to assess the VIPD's compliance with ¶ 35 of the Consent Decree during the Third Quarter of 2013 because the VIPD did not provide the Police Practices Experts with recorded witness statements or interviews. Without those recordings, we cannot evaluate, among other things, whether investigators used leading questions, whether there were material inconsistencies between witness statements, and whether any such inconsistencies were resolved appropriately.

**Recommendations:**

The VIPD should provide the OIM with copies of any recorded witness statements or interviews relating to use of force and citizen complaint investigations. During the Third Quarter of 2013, the VIPD began video recording certain training programs at the OIM's request. Given the size of those video recordings, the VIPD typically loads them onto an external hard drive to be delivered to the OIM (the external hard drive is then returned to the VIPD to be used again for the same purpose). The VIPD should use the same process to provide the OIM with recorded witness statements and interviews.

The VIPD should also require Supervisors to identify the universe of relevant evidence and document what each piece means to the case under review. We also recommend that the VIPD provide refresher training to Supervisors on making credibility determinations and drawing inferences from

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those determinations. It is also critical for the VIPD to follow-up with witnesses who may not initially be available because Supervisors cannot effectively evaluate uses of force without reviewing all of the relevant evidence.

The Use of Force working group, Commissioner, Assistant Commissioner, Chiefs, and Deputy Chiefs should audit use of force investigations to determine the extent to which Supervisors are complying with the requirements of ¶ 35 of the Consent Decree. Based on these audits, the VIPD should develop a process for identifying personnel who continually fail to comply. Once those individuals are identified, the working group should work in concert with the Chiefs, the Deputy Chiefs, the IAB, and the Training Division to provide remedial training, or other corrective action, including disciplinary sanctions, as necessary.

**36. Supervisors, or designated investigating officers or units, shall conduct an investigation of all uses of force or injury resulting from a use of force by any officer under their command. This requirement does not apply to uses of force involving the lowest level of force as defined in VIPD policy as approved by DOJ. In an investigation, supervisors or designated investigating officers or units, shall interview all witnesses to a use of force or an injury resulting from a use of force. Consistent with the requirements of the collective bargaining agreement or other applicable law, VIPD supervisors or designated investigating officers or units shall ensure that all officer witnesses provide a statement regarding the incident. Supervisors, or designated investigating officers or units, shall ensure that all use of force reports for all levels of force identify all officers who were involved in the incident or were on the scene when it occurred. Supervisors, or designated investigating officers or units, shall ensure that all reports for all levels of force indicate whether an injury occurred, whether medical care was provided, and whether the subject refused medical treatment. Supervisors, or designated investigating officers or units, shall ensure that all reports include contemporaneous photographs or videotapes taken of all injuries at the earliest practicable opportunity, both before and after any treatment, including cleansing of wounds.**

**Compliance Assessment:**

The Department has achieved Phase 1 and 2 compliance because it has issued policies in compliance with ¶ 36 of the Consent Decree and has provided related training, but it has not achieved Phase 3 compliance as discussed below. Therefore, the VIPD is not yet in substantial compliance with ¶ 36 of the Consent Decree.

**VIPD Report:**

As reported above, the VIPD has adopted policies relating to ¶¶ 31 - 41 of the Consent Decree and provided corresponding training through in-service, Roll Call, and Commanders Call training. The VIPD also reports that it is developing an Audit Unit to test whether VIPD personnel are complying with Consent Decree-related policies. The VIPD will provide additional information about its audits in future quarterly Status Reports.

**OIM Report:**

Based on the Police Practices Experts' review of completed use of force investigations during the Third Quarter of 2013, we concluded that Officers who witnessed a use of force provided written statements in 3 out of 3 of the completed use of force investigations. Officers who were involved in the incident or were on the scene when it occurred were identified in 3 out of 3 of the investigations. In 1 out of 1 of the investigations where an Officer or citizen was injured, the investigation file contained photographs of the injuries.

**Recommendations:**

The Use of Force working group should audit investigations to determine the extent to which Supervisors are complying with the requirements of ¶ 36 of the Consent Decree. Based on these audits, the VIPD should develop a process for identifying personnel who continually fail to comply. Once those individuals are identified, the working group should work in concert with the Chiefs, Deputy Chiefs, the IAB, and the Training Division to provide remedial training, or other corrective action, including disciplinary sanctions, as necessary. All audits should be documented and shared with the Compliance Coordinator and the OIM.

**37. All investigations into use of force shall be reviewed by the Officer's Commander and/or Director, or by a Commander and/or Director in the designated investigative unit, who shall identify any deficiencies in those reviews, and shall require supervisors, or designated investigative officers or units, to correct any and all deficiencies. Supervisors, and designated investigative officers or units, will be held accountable for the quality of their reviews. Appropriate non-disciplinary corrective action and/or disciplinary action will be taken when a supervisor, or designated investigative officer or unit, fails to conduct a timely and thorough review, or neglects to recommend appropriate corrective action, or neglects to properly implement appropriate corrective action. As provided by VIPD policy and approved by DOJ, designated command staff shall further review the Commander and/or Director's reviews according to the level of force involved.**

**Compliance Assessment:**

The Department has achieved Phase 1 and 2 compliance because it has issued policies in compliance with ¶ 37 of the Consent Decree and has provided related training, but it has not achieved Phase 3 compliance as discussed below. Therefore, the VIPD is not yet in substantial compliance with ¶ 37 of the Consent Decree.

**VIPD Report:**

As reported above, the VIPD has adopted policies relating to ¶¶ 31 - 41 of the Consent Decree and provided corresponding training through in-service, Roll Call, and Commanders Call sessions. The VIPD also reports that it is developing an Audit Unit to test whether VIPD personnel are complying with Consent Decree-related policies. The VIPD will provide additional information about its audits in future quarterly Status Reports.

**OIM Report:**

Based on the Police Practices Experts' review of completed use of force investigations during the Third Quarter of 2013, we found that 3 out of 3 of the use of force investigations reviewed were complete. A "complete" investigation file generally consists of the following (to the extent applicable): Form 1A; 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.

In 3 out of 3 of the investigations, a Deputy Chief reviewed the investigative report and supporting documents, and concurred with the investigative findings, and in 2 out of 3 of the investigation files, underlying problems and training needs were identified.

Although Commanders are consistently reviewing investigations conducted by their subordinates, they often overlook or ignore deficiencies in those investigations. For example, in the use of force investigation described in ¶ 32, the Commander failed to identify any of the deficiencies that we noted. Moreover, in past quarters, the OIM observed that when some Commanders returned investigations for additional work, they failed to follow up regarding the status of the investigation. When Commanders return investigations for additional work, they should detail the deficiencies that need to be corrected and set a deadline by which the additional work should be completed.



**Recommendations:**

The Chiefs and Deputy Chiefs need to hold Supervisors and Commanders accountable for the quality and timelines of use of force investigations. The VIPD's efforts to implement a tracking form for Supervisors to follow the progress of the use of force investigations that are assigned to them is a step in the right direction. The form should identify everyone who worked on the investigation and specify the actions that they took. The VIPD should keep the OIM updated about its experience using the new tracking form.

The Use of Force working group, Commissioner, Assistant Commissioner, Chiefs, and Deputy Chiefs should audit investigations to determine the extent to which Supervisors are complying with the requirements of ¶ 37 of the Consent Decree. In particular, they should audit whether Supervisors are conducting adequate use of force investigations, and whether the Chiefs/Deputy Chiefs are reviewing investigations, identifying deficiencies, and forwarding closed cases to the IAB and Training Division (for review and archiving). Based on these audits, the VIPD should develop a process for identifying personnel who continually fail to comply. Once those individuals are identified, the working group should work in concert with the Chiefs, the Deputy Chiefs, the IAB, and the Training Division to provide remedial training, or other corrective action, including disciplinary sanctions, as necessary. All audits should be documented and shared with the Compliance Coordinator and the OIM.

**38. The VIPD will investigate all critical firearm discharges. The VIPD will ensure that the investigation accounts for all shots and locations of all officers who discharged their firearms. The VIPD will conduct ballistic or crime scene analyses, including gunshot residue or bullet trajectory tests, as appropriate.**

**Compliance Assessment:**

The Department has achieved Phase 1 and 2 compliance because it has issued policies in compliance with ¶ 38 of the Consent Decree and has provided related training, but it has not achieved Phase 3 compliance as discussed below. Therefore, the VIPD is not yet in substantial compliance with ¶ 38 of the Consent Decree.

**VIPD Report:**

The VIPD reports that the IAB continues to investigate or review all critical firearms discharges. The VIPD also reports that it provided training regarding investigating crime scenes during the First Quarter of 2013, and death scene analysis and cold case investigations during the Fourth Quarter of 2013.

**OIM Report:**

During the Second Quarter of 2013, investigations into at least three critical firearms discharges, including two police-involved shootings, were unresolved due, in part, to outstanding ballistics reports. According to the VIPD, there is a contract with an outside provider for such analysis. Unfortunately, there is a significant backlog preventing the Department from completing investigations of critical firearms discharges (a key component of the Consent Decree) on a timely basis.

During the Third Quarter of 2013, the OIM requested a status update from the VIPD about two police-involved shootings that occurred in 2011 and 2012, respectively. The VIPD did not complete any of those investigations during the Third Quarter of 2013. According to the VIPD's Reporting, Investigation and Review of Use of Force Policy, all IAB investigations should be completed within 50 days and criminal investigations should be completed within 120 days. For more than a year, the VIPD has told us that both investigations have been delayed because of outstanding ballistics reports. These delays are unacceptable, particularly almost 5 years after entering into the Consent Decree. The OIM will continue to monitor the status of both investigations.

Also during the Third Quarter of 2013, the Police Practices Experts reviewed a use of force investigation stemming from the accidental discharge of a firearm by an Officer. The Officer accidentally discharged her firearm while exiting her vehicle and attempting to draw her gun in order to confront a suspect. Although the VIPD adequately investigated the accidental discharge, we are concerned that the involved Officer (who was sent for remedial training) had served as a firearms training instructor through the time of this incident.

**Recommendation:**

The VIPD must fully investigate all critical firearms discharges. This includes, as stated in the Consent Decree, "ballistic or crime analyses, including gunshot residue or bullet trajectory tests, as appropriate." The VIPD's current system of relying on a single outside vendor for ballistics analysis is not working. The VIPD should identify additional outside resources and consider bolstering its in-house capabilities.

Once the VIPD clears the current backlog of investigations, the VIPD should provide the OIM with documentation that it is investigating all critical firearms discharges as required by ¶ 38 of the Consent Decree. The VIPD should also provide the OIM with a status update about all of its outstanding investigations of critical firearms discharges.

In addition, the VIPD should review how Officers are taught to draw their weapons, particularly when exiting a vehicle. Officers should be taught to keep

their finger outside the trigger guard and off the trigger until they are prepared to fire. The fact that a firearms instructor appears to have failed to follow these rules for an often-repeated action underscores the importance of examining the VIPD's training in this regard.

**39. VIPD shall complete development of a Use of Firearms policy that complies with applicable law and current professional standards. The policy shall prohibit officers from possessing or using unauthorized firearms or ammunition and shall inform officers that any such use may subject them to disciplinary action. The policy shall establish a single, uniform reporting system for all firearms discharges. The policy shall prohibit officers from obtaining service ammunition from any source except through official VIPD channels, and shall specify the number of rounds VIPD authorizes its officers to carry. The policy will continue to require that all discharges of firearms by officers on- or off-duty, including unintentional discharges, be reported and investigated.**

**Compliance Assessment:**

The Department has achieved Phase 1 compliance because it has issued the Firearms Policy. Because ¶ 39 of the Consent Decree only requires the Department to develop a policy, Phase 2 and 3 are not applicable. Therefore, the VIPD is in substantial compliance with ¶ 39 of the Consent Decree.

**40. The VIPD shall revise its policies regarding off-duty officers taking police action to: a) provide that off-duty officers shall notify on-duty VIPD or local law enforcement officers before taking police action, absent exigent circumstances, so that they may respond with appropriate personnel and resources to handle the problem; b) provide that, if it appears the officer has consumed alcohol or is otherwise impaired, the officer shall submit to field sobriety, breathalyzer, and/or blood tests.**

**Compliance Assessment:**

The Department has achieved Phase 1 compliance because it has issued the Off-Duty Official Action Policy. Because ¶ 40 of the Consent Decree only requires the Department to develop a policy, Phase 2 and 3 are not applicable. Therefore, the VIPD is in substantial compliance with ¶ 40 of the Consent Decree.

**41. The VIPD shall continue to provide an intermediate force device, which is between chemical spray and firearms on the force continuum, that can be carried by officers at all times while on-duty. The VIPD shall continue its policy regarding the intermediate force device, incorporate the intermediate force device into the force continuum and train all officers in its use on an annual basis.**

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**Compliance Assessment:**

The Department has achieved Phase 1 and 2 compliance because it has issued policies in compliance with ¶ 41 of the Consent Decree and has provided related training, but it has not achieved Phase 3 compliance as discussed below. Therefore, the VIPD is not yet in substantial compliance with ¶ 41 of the Consent Decree.

**VIPD Report:**

The VIPD reports that it continues to equip VIPD personnel with TASERs, and provides annual training. The VIPD also reports that it developed a lesson plan to teach VIPD personnel how to conduct periodic inspections relating to TASERs, firearms, and O.C. Spray.

**OIM Report:**

During the Third Quarter of 2013, the VIPD conducted training on intermediate weapons, O.C. Spray, TASERs, and police batons during their annual in-service training. While monitoring during the Third Quarter of 2013, the OIM observed that Officers carry their intermediate weapons. The Police Practices Experts have also reviewed use of force incidents and concluded that Officers are effectively deploying these tools.

**Recommendations:**

The Use of Force working group should continue to work with the Training Division to ensure that training programs are held on the Electronic Control Weapon ("ECW") Policy on an on-going basis so that all Officers will ultimately be trained and authorized to use TASERs in lieu of more lethal force tools. The Use of Force working group should also work with the Director of Training to evaluate post-training examinations to help assess the degree to which VIPD personnel understand the policies and the lessons conveyed during training. The Use of Force working group and Director of Training should then schedule follow-up training (continuing in-service or Roll Call or Commanders Call training) based on the results of those post-training examinations. In addition, the VIPD should develop a process for identifying personnel who continually fail to demonstrate knowledge of the policy, and provide remedial training or discipline as appropriate.

The Use of Force working group should also provide the OIM with documentation that VIPD personnel are proficient in the requirements of the ECW Policy or that the Department has fully implemented the policy. Additionally, the Use of Force working group should provide documentation to the OIM showing the extent to which VIPD personnel are trained to use and equipped with TASERs.

## Citizen Complaint Process

### Joint Action Plan Requirements

Joint Action Plan Requirements	Status
By <b>November 30, 2012</b> , implement system to ensure all staff are trained on policies (i.e., a tracking system) and periodically test proficiency with the policies.	<b>Not satisfied.</b> The VIPD did not provide the OIM with documentation that the Department has such a tracking system.
By <b>November 30, 2012</b> , offer competency-based training to Officers and Supervisors.	<b>Not satisfied.</b> The VIPD provided in-service training during the Second Quarter of 2013. The VIPD has not provided the OIM with a report about the number of Officers and Supervisors that have been trained on the policies.
By <b>November 30, 2012</b> , implement system to ensure all staff are trained on policies (i.e., a tracking system) and periodically test Supervisors' knowledge of the preponderance of the evidence standard.	<b>Not satisfied.</b> The VIPD did not provide the OIM with documentation that the Department has such a tracking system.
By <b>November 30, 2012</b> , offer competency-based training of all investigators.	<b>Not satisfied.</b> The VIPD provided in-service training during the Second Quarter of 2013. The VIPD has not provided the OIM with a report about the number of investigators that have been trained on the policies.
On <b>November 30, 2012</b> , commence quarterly review of files in IAU and Zones to ensure compliance.	<b>Not satisfied.</b> The VIPD did not provide the OIM with documentation that the Department has conducted these reviews.
By <b>November 30, 2012</b> , monthly review of files to determine whether complainants are being notified and implementation of timelines for notification and sample notification letter.	<b>Not satisfied.</b> The VIPD did not provide the OIM with documentation that the Department has conducted these reviews.
By <b>December 31, 2012</b> , implement tracking system to document 5-day requirement.	<b>Not satisfied.</b> Although the VIPD has reported that complaints are referred to the IAB within the required 5-day

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	period because the IAB retrieves complaints from drop-boxes located in each Zone, the VIPD has not provided any documentation demonstrating that the Department has such a tracking system.
By <b>December 31, 2012</b> , implement a tracking system for complaints referred to a Zone and a tracking system for notifying the Police Commissioner of complaints alleging excessive use of force.	<b>Not satisfied.</b> The VIPD did not provide the OIM with documentation that the Department has such a tracking system.
By <b>January 31, 2013</b> , offer refresher training on policies ongoing, through documented, periodic in-service and Roll Call/Commanders Call training. Incorporate competency-based training on policies into Police Academy.	<b>Not satisfied.</b> The VIPD provided in-service training during the Second Quarter of 2013. The VIPD has not provided the OIM with a report about the number of Officers and Supervisors that have been trained on the policies.
By <b>January 31, 2013</b> , execute any contract(s) necessary to train Supervisors or others responsible for conducting ballistic or crime scene analyses.	<b>Not satisfied.</b> The VIPD has not reported that the Department has executed any contracts for such training.
By <b>January 31, 2013</b> , all statements will be recorded. After January 31, 2013, bi-monthly review to ensure statements are being recorded.	<b>Not satisfied.</b> The VIPD did not provide the OIM with documentation that the Department has implemented such a review.
By <b>June 30, 2013</b> , in consultation with DOJ, implement audit tools to ensure staff are complying with the policies (i.e., review of sample of citizen complaint investigation files). Also ensure that lapses in policy implementation are addressed by system of documented discipline and/or re-training.	<b>Not Satisfied.</b> The VIPD continued to work on its audit tools during the Second and Third Quarters of 2013.
By <b>June 30, 2013</b> , in consultation with DOJ, create a periodic report that analyzes patterns of violations of VIPD policy. Using the information gathered in the report, evaluate areas	<b>Not Satisfied.</b> The VIPD continued to analyze patterns of violations of VIPD policy during the Second and Third Quarters of 2013, but the VIPD did not provide the OIM with

for policy modification or appropriate remedial action (e.g., training).	documentation that such information is being used as required.
By <b>June 30, 2013</b> , in consultation with DOJ, develop a process for identifying Supervisors who are not using the preponderance of the evidence standard and provide and document discipline and/or remedial training.	<b>Not Satisfied.</b> The VIPD continued to develop a process for identifying Supervisors who are not using the preponderance of the evidence standard during the Second and Third Quarters of 2013.
By <b>June 30, 2013</b> , in consultation with DOJ, develop a process for identifying supervisors who neglect their responsibilities to investigate as required by policy and provide and document discipline and/or remedial training.	<b>Not Satisfied.</b> The VIPD continued to develop a process for identifying Supervisors who neglect their responsibilities to investigate during the Second and Third Quarters of 2013.
By <b>June 30, 2013</b> , monthly review of IAU files to ensure compliance	<b>Not Satisfied.</b> The VIPD continued to work on its audit tools during the Second and Third Quarters of 2013.
By <b>June 30, 2013</b> , in consultation with DOJ, audit timeliness of completion of citizen complaint investigations.	<b>Not Satisfied.</b> The VIPD continued to work on its audit tools during the Second and Third Quarters of 2013. The VIPD received DOJ approval for its audit tools during the Fourth Quarter of 2013.

**42. The VIPD will develop and implement a program to inform persons that they may file complaints regarding the performance of any officer. This program will include distribution of complaint forms, fact sheets, informational posters, and public service announcements that describe the citizen complaint process.**

**Compliance Assessment:**

The Department has achieved Phase 1 compliance because it has developed and implemented a program to inform citizens that they may file a complaint/compliment regarding the performance of an Officer. The VIPD has provided extensive documentation about its efforts to inform the community about the citizen complains process. The Police Practices Experts have also observed these efforts first hand. Because ¶ 42 only requires the Department to develop a program, Phases 2 and 3 are not applicable. Therefore, the Department is in substantial compliance with ¶ 42. The OIM is pleased that

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the VIPD has reported on continuing compliance efforts during the Third Quarter of 2013. The OIM will continue to assess the Department's efforts to maintain compliance in future quarters.

**43. The VIPD will make complaint forms and informational materials available at government properties such as VIPD district stations, substations, mobile substations, libraries, the Internet, and, upon request, to community groups and community centers. At each VIPD district station, substation, and mobile substation, the VIPD will permanently post a placard describing the complaint process and include the relevant phone numbers. These placards shall be displayed in both English and Spanish, and where deemed necessary, in French or French Patois, to account for diversity in the VI population. The VIPD will require all officers to carry informational brochures and complaint forms, in English and Spanish, and where deemed necessary, in French or French Patois, in their vehicles at all times while on duty. If a citizen objects to an officer's conduct, that officer will inform the citizen of his or her right to make a complaint. Officers will not discourage any person from making a complaint.**

**Compliance Assessment:**

The Department has achieved Phase 1 and 2 compliance because it has issued policies pertaining to the citizen complaint process and provided related training, but it has not achieved Phase 3 compliance as discussed below. Therefore, the Department is not yet in substantial compliance with ¶ 43.

**VIPD Report:**

The VIPD continues to promote the Department's citizen complaint/compliment process through fact sheets, complaint/compliment forms, a hotline, informational posters, and public service announcements ("PSAs"). The Department has made these materials available at the Zones, substations, mobile substations, libraries, the Department's website, and other locations. The Department continues to provide the OIM with documentation of inspections at the Zones and other locations to ensure that adequate supplies of the complaint process materials are available.

As previously reported, the complaint form has been revised for complainants to indicate whether an Officer has discouraged them from filing a complaint. The VIPD plans to implement the OIM's recommendation to modify the current PSAs to include language that advises citizens to contact the IAB if they were discouraged from filing a complaint or if Officers neglected to advise them of their right to make a complaint.



**OIM Report:**

The VIPD made additional progress towards compliance with ¶ 43 during the Third Quarter of 2013. The VIPD provided the OIM with documentation showing that complaint forms and informational materials were available at VIPD offices and other government properties. The OIM also learned during the Third Quarter of 2013 that the leader of the Citizen Complaint Process working group provided a memorandum to all Commanders requiring that inspection forms include when complaint process materials are replaced at the Zones and other locations. The OIM expects that these changes will be reflected in inspection forms submitted during the Fourth Quarter of 2013.

**Recommendations:**

The Department should continue to audit whether complaint forms and related informational materials are available at all required locations. The VIPD must audit whether the biweekly inspection reports are being submitted, and, if not, discipline those Commanders who fail to submit the required documentation or submit deficient documentation. As reported for several quarters, the Department has revised its complaint form for complainants to indicate whether an Officer has discouraged them from filing a complaint. The OIM expects that the VIPD will conduct and document audits during the Fourth Quarter of 2013 to assess this requirement. The VIPD should then provide documentation of these audits to the Compliance Coordinator and the OIM. Through the Department's information campaign, the VIPD should also inform citizens that they may contact the IAB if an Officer refuses to take their complaint or discourages them from filing a complaint. The VIPD should also ensure that any complaints against Officers are addressed appropriately and promptly.

**44. Complaints may be filed in writing or verbally, in person or by mail, telephone (or TDD), facsimile or electronic mail. The duty officer at the front desk of each district station will be authorized to take complaints, including third-party complaints, which persons may file at any district station. Complaint intake officers may describe facts that bear upon a complainant's demeanor and physical condition but may not express opinions regarding his/her mental competency or veracity. Each complaint will be resolved in writing. Upon receipt, each complaint will be assigned a unique identifier, which will be provided to the complainant. Each complaint will be tracked according to the basis for the complaint (e.g., excessive force, discourtesy, improper search, etc.).**

**Compliance Assessment:**

The Department has achieved Phase 1 and 2 compliance because it has issued policies pertaining to the citizen complaint process and provided related

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training, but it has not achieved Phase 3 compliance as discussed below. Therefore, the Department is not yet in substantial compliance with ¶ 44.

**VIPD Report:**

The VIPD reports that it continues to accept complaints as required by ¶ 44 of the Consent Decree. The Department also reports that the IAB provides Supervisors with weekly, monthly, and quarterly reports listing active and completed complaint investigations. Also, investigated complaints are resolved in writing and dispositions letter are mailed by the IAB to complainants. During the Second Quarter of 2013, the VIPD provided the OIM with sample templates that will be used to update complainants on the status and disposition of the investigations into their complaints.

**OIM Report:**

The DOJ approved the Acceptance of Citizen Complaint Policy on August 2, 2011. The policy reflects the requirements in ¶ 44 of the Consent Decree. The VIPD reported that nearly 18% of all complaints made in the St. Thomas/St. John District and nearly 11% of all complaints made on the St. Croix District during the Third Quarter of 2013 were due to discourtesy to citizens, including making improper comments to citizens. According to the VIPD, Commanders are unclear about their responsibilities under the Acceptance of Citizen Complaints Policy and merely refer the complainant to the IAB. The VIPD has indicated that it plans to develop a tracking system by January 31, 2014 to ensure that all personnel are trained on the citizen complaint policies. Once the VIPD has developed this tracking system, the OIM will assess whether it sufficiently tracks that all personnel are trained on the citizen complaint policies. The VIPD must also develop a process for auditing such that once a complaint receives a VITEMA number, it is forwarded to the IAB within the timeframe allotted under Department policy.

**Recommendations:**

As stated in previous reports, the VIPD should continue to conduct audits to determine whether the required VIPD personnel are trained on the Department's policies, whether all complaints are being resolved in writing, and whether complaint numbers are being provided to complainants. The VIPD should then provide documentation relating to those audits to the Compliance Coordinator and the OIM. The VIPD should continue to offer Commanders Call training to all Commanders on the Acceptance of Citizen Complaint Policy, and document such training and provide the results of examinations administered after training to the OIM. In addition, the VIPD should audit complaint forms to ensure that complaint in-take Officers are not expressing their opinions regarding a complainant's mental competency or veracity on the complaint

forms. The VIPD should also finalize a tracking system for ensuring that all sworn personnel are trained on the Acceptance of Citizen Complaints Policy.

**45. Copies of all allegations of misconduct against the VIPD filed with the Zone Commands will be referred to Internal Affairs Unit (“IAU”) within five business days.**

**Compliance Assessment:**

The Department has achieved Phase 1 and 2 compliance because it has issued policies pertaining to the citizen complaint policies and provided related training, but it has not achieved Phase 3 compliance as discussed below. Therefore, the Department is not yet in substantial compliance with ¶ 45.

**VIPD Report:**

During the Third Quarter of 2013, the VIPD developed an audit plan to monitor compliance with the requirements of ¶ 45. The VIPD reports that IAPro, Blue Team, and log books<sup>15</sup> will be used to ensure that the Department complies with the five-day requirement in ¶ 45.

According to the VIPD, it does not anticipate an issue with satisfying the five-day requirement because (i) a complaint filed at a Zone is immediately uploaded to IAPro and entered into Blue Team; and (ii) IAB agents collect complaints deposited in the drop boxes located at the Zones on a daily basis.

**OIM Report:**

The DOJ approved the Acceptance of Citizen Complaint Policy on August 2, 2011. The policy reflects the requirements in ¶ 45 of the Consent Decree. The VIPD has reported that complaints are referred to the IAB within the required five-day period because IAB personnel retrieve complaints from drop-boxes on a daily basis. The VIPD should verify that materials are picked up in a timely manner. The VIPD must also verify that all complaints with numbers provided by VITEMA are submitted to the IAB. However, the VIPD has not provided any documentation showing that all complaints initiated in the Zones are in fact retrieved on a daily basis.

**Recommendations:**

The VIPD needs to develop a process for auditing whether copies of all allegations of misconduct are referred to the IAB within 5 business days. This should include accessing information from VITEMA to ensure that all

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<sup>15</sup> The VIPD reports that it used log books in the Zones on both Districts to document all uses of force and citizen complaints filed at Zones prior to the installation of IAPro and Blue Team.

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complaints are forwarded. The Department should then provide documentation relating to those audits to the OIM.

**46. Complaints will be evaluated based on a preponderance of the evidence standard, for which the Territory will develop and implement appropriate training.**

**Compliance Assessment:**

The Department has achieved Phase 1 and 2 compliance because it has issued the Investigating Misconduct and Citizen Complaints Policy and provided related training, but it has not achieved Phase 3 compliance as discussed below. Therefore, the Department is not yet in substantial compliance with ¶ 46.

**VIPD Report:**

During the Third Quarter of 2013, the Citizen Complaint Process working group created an audit plan to review the Department's closed citizen complaint investigations, including reviewing audio taped interviews. As part of this audit process, the VIPD will assess Supervisors' knowledge and application of the preponderance of the evidence standard during in-service and Commanders Call training. Competency tests on the preponderance of evidence standard were previously administered to Supervisors during the Second Quarter of 2013.

**OIM Report:**

The VIPD has provided initial training on the preponderance of evidence standard. During the Second Quarter of 2013, the VIPD provided the OIM with documentation showing that Supervisors were tested on the preponderance of the evidence standard. According to the VIPD, a total of 45 Supervisors were tested on the preponderance of the evidence standard with a 66% passing rate (30 out of 45). Although initially requested in the Second Quarter of 2013, the VIPD still has not provided the OIM with any documentation demonstrating that the failing Supervisors have been retrained, retested, and, if necessary, disciplined. This request remained outstanding during the Third Quarter of 2013.

**Recommendations:**

As stated during the Second Quarter of 2013, the OIM was disappointed that such a high percentage of Supervisors failed the VIPD's competency test. The VIPD should provide additional training to those Supervisors and then re-test their knowledge of the preponderance of the evidence standard using different test questions. In addition, the Training Division should re-examine its training relating to the preponderance of the evidence standard. The fact

that so many Supervisors failed the Department's competency test strongly suggests that the underlying training was inadequate. Further, the VIPD must establish a mechanism to audit compliance with the preponderance of the evidence standard. Documentation of the examinations and the audits should be forwarded to the Compliance Coordinator and the OIM.

**47. The VIPD will explicitly prohibit from investigating an incident any officer who used force during the incident, whose conduct led to the injury to a person, or who authorized the conduct that led to these reportable incidents.**

**Compliance Assessment:**

The Department has achieved Phase 1 compliance because it has issued the Investigating Misconduct and Citizen Complaints Policy. Because ¶ 47 only requires the Department to develop a policy, Phases 2 and 3 are not applicable. Therefore, the Department has achieved substantial compliance with ¶ 47.

**48. The VIPD will investigate every citizen complaint. The VIPD will establish a clear policy and procedure regarding the intake of any complaint, including anonymous and confidential complaints, against a VIPD officer. This policy and these procedures will include instructions to an officer for taking a complaint and prompt delivery to a supervisor.**

**Compliance Assessment:**

The Department has achieved Phase 1 and 2 compliance because it has issued the Acceptance of Citizen Complaints Policy and the Investigating Misconduct and Citizen Complaints Policy and provided related training, but it has not achieved Phase 3 compliance as discussed below. Therefore, the Department is not yet in substantial compliance with ¶ 48.

**VIPD Report:**

The VIPD continues to receive complaints through a variety of methods, including via email and drop-boxes at the Zones. The Acceptance of Citizen Complaints Policy dictates that the IAB remain the official clearing house for all complaints received, by either assigning complaints to the Zones for investigation or investigating the complaint directly.

The IAB reports that it produces IAPro reports on a weekly, monthly, and quarterly basis listing completed and outstanding use of force and citizen complaint investigations. These reports are provided to all Supervisors, Commanders, Chiefs, and Deputy Chiefs in both Districts.

The VIPD reports that the Deputy Chief of the St. John District issued a memorandum pertaining to outstanding use of force and citizen complaint

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investigations from January to August 2013. The Deputy Chief of the St. John District conducted Commanders Call training addressing outstanding investigations. To facilitate the prompt completion of these cases, the Department ordered that overdue investigations be completed within a two-week time period.

**OIM Report:**

The VIPD issued the Acceptance of Citizen Complaints Policy and the Investigating Misconduct and Citizen Complaints Policy on August 2, 2011. The IAB has conducted in-service and Roll Call and Commanders Call training addressing common mistakes made by Supervisors in citizen complaint investigations. The Police Practices Experts will continue to assess the quality of investigations completed in the Zones in subsequent quarters.

The VIPD has provided verbal updates about the status of the overdue investigations and whether the two-week deadline for the completed investigations was met, but has not provided documentation showing that all overdue investigations have been completed or whether any disciplinary action was taken against Officers who failed to meet the two-week deadline.

**Recommendations:**

As previously reported, the VIPD should develop a process to audit whether complaints are being adequately investigated within the allotted time period. We are hopeful that the Citizen Complaint Process working group's initiative will be helpful in this regard. All audits should be documented and shared with the Compliance Coordinator and the OIM. The VIPD should also provide documentation showing that all overdue investigations have been completed and whether any disciplinary action was taken against Officers who failed to meet the two-week deadline.

**49. The VIPD will institute a centralized numbering and tracking system for all complaints and each complaint will receive a tracking number as quickly as possible. The IAU will be designated as the primary and centralized agency to determine whether the investigation will be assigned to zone (one of the seven zones located throughout the Virgin Islands), retained by the IAU, or referred for possible criminal investigation. If the IAU refers a complaint to a zone, copies of all documents, findings, and recommendations should be immediately forwarded to the IAU for tracking and monitoring. For complaints alleging the excessive use of force or violation of a person's constitutional rights, the Police Commissioner should be notified no less than twenty-four hours after receipt of a complaint.**

**Compliance Assessment:**

The Department has achieved Phase 1 and 2 compliance because it has issued the Acceptance of Citizen Complaints Policy and the Investigating Misconduct and Citizen Complaints Policy and provided related training, but it has not achieved Phase 3 compliance as discussed below. Therefore, the Department is not yet in substantial compliance with ¶ 49.

**VIPD Report:**

The VIPD contends that it has substantially complied with ¶ 49. Specifically, it reports that it has centralized its complaint numbering and tracking system, and that the Commissioner is notified about allegations of excessive force or violations of a person's constitutional rights within twenty four hours. This notification is documented by the IAB. The VIPD also reports that the IAB continues to decide whether investigation will be assigned to a Zone, retained by the IAB, or referred for possible criminal investigation. Once complaints investigated at the Zones are returned to the IAB, the IAB will review the investigation. If the IAB concludes that an investigation is adequate, the investigation will conclude and the IAB will maintain a copy of the investigation file for its records. However, if the IAB concludes that an investigation was inadequate, the IAB will return the investigation to the Zone for further work and the process described above will be repeated.

**OIM Report:**

The VIPD issued the Acceptance of Citizen Complaints Policy on August 2, 2011. That policy reflects the requirements of ¶ 49 of the Consent Decree. The VIPD currently relies on VITEMA to assign tracking numbers for each complaint. The VIPD should ensure that each complaint (once assigned a complaint number by VITEMA) is forwarded to the IAB for investigation or referral to the Zones. The VIPD reports that it created a form to document when the Commissioner is notified about complaints pertaining to excessive use of force or violations of constitutional rights.

**Recommendations:**

Chiefs and Deputy Chiefs must ensure that cases referred to the Zones for investigation by the IAB are completed in the time period required by Department policy and are investigated completely. Any deficiencies in investigations must also be corrected. The Department must train, and if necessary, discipline, Supervisors who fail to satisfy these requirements. The VIPD should develop a process for auditing whether the Department has complied with the requirements of ¶ 49 of the Consent Decree. All audits should be documented and shared with the Compliance Coordinator and the OIM. In addition, the VIPD should provide the OIM with documentation

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showing that the Commissioner was notified about complaints alleging excessive force or violations of constitutional rights.

**50. The VIPD will adopt a single policy concerning the investigation of misconduct complaints, regardless of whether the investigation is conducted by the IAU or a zone.**

**Compliance Assessment:**

The Department has achieved Phase 1 compliance because it has issued the Investigating Misconduct and Citizen Complaints Policy. Because ¶ 50 only requires the Department to develop a policy, Phases 2 and 3 are not applicable. Therefore, the Department has achieved substantial compliance with ¶ 50.

**51. The VIPD will establish policies and procedures and train all of its investigators on the factors to consider when evaluating complainant or witness credibility; examination and interrogation of accused officers and other witnesses; identifying misconduct even if it is not specifically named in the complaint; and using the preponderance of the evidence standard as the appropriate burden of proof. VIPD investigators will ensure that all officers on the scene of an incident provide a statement regarding the incident. The policy will require that all interviews be mechanically recorded using an audio or video tape.**

**Compliance Assessment:**

The Department has achieved Phase 1 and 2 compliance because it has issued the Investigating Misconduct and Citizen Complaints Policy and provided related training, but it has not achieved Phase 3 compliance as discussed below. Therefore, the Department is not yet in substantial compliance with ¶ 51.

**VIPD Report:**

In-service training is scheduled for the Fourth Quarter of 2013 and is scheduled to include training on the citizen complaint process and the preponderance of the evidence standard. In addition to in-service training, the VIPD continues to offer Roll Call and Commanders Call training on these topics, and reinforces training through post-training examinations. To further comply with this provision, the VIPD has purchased video cameras and audio recorders for taping witness interviews. The VIPD notes that it will continue to audit the Department's compliance with this provision through working group inspections, audits by the Audit Unit (once functional), and audits by Supervisors.



**OIM Report:**

The VIPD issued the Investigating Misconduct and Citizen Complaint Policy on August 2, 2011. That policy reflects the requirements of ¶ 51 of the Consent Decree. The VIPD has provided initial training on the preponderance of evidence standard, but the VIPD has not provided documentation reflecting that VIPD personnel are proficient in the requirements of ¶ 51.

Earlier this year, the VIPD provided the OIM with information about 15 cases from both Districts involving serious uses of force and citizen complaints about VIPD personnel using force. During the Third Quarter of 2013, the OIM requested an update on the 9 cases from the St. Thomas/St. John District, and learned that 4 investigations have been completed and that 5 investigations remain outstanding. The OIM will review the 4 completed investigations during the Fourth Quarter of 2013. Once the remaining 5 investigations are complete, the VIPD should forward them (without prompting) to the OIM for review. During the Third Quarter of 2013, all of the closed investigations that the Police Practices Experts reviewed contained witness statements from Officers who were on the scene at the time of the incident.

**Recommendations:**

As previously recommended, the Citizen Complaint Process working group should continue to test whether VIPD personnel adequately understand the citizen complaint process. The VIPD should provide VIPD personnel with additional training on the citizen complaint process and then conduct and document periodic audits to ensure that VIPD personnel are complying with the relevant policies. The VIPD should develop a process for identifying personnel who continually fail to demonstrate knowledge of the policy, and provide remedial training as appropriate.

Specifically, the VIPD should also audit whether investigators correctly: 1) evaluate complainant or witness credibility; 2) examine and interrogate accused Officers and other witnesses; and 3) identify misconduct. The audits should also evaluate whether VIPD investigators take statements from all Officers on the scene of an incident. Based on its audits, the VIPD should identify any trends or areas for improvement. All audits should be documented and shared with the Compliance Coordinator and the OIM.

**52. The policy will require that the investigative findings include whether: 1) the police action was in compliance with policy, training and legal standards, regardless of whether the complainant suffered harm; 2) the incident involved misconduct by any officer; 3) the use of different tactics should or could have been employed; 4) the incident indicates a need for additional training, counseling or other non-disciplinary**

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**corrective measures; and 5) the incident suggests that the VIPD should revise its policies, training, or tactics.**

**Compliance Assessment:**

The Department has achieved Phase 1 compliance because it has issued the Investigating Misconduct and Citizen Complaints Policy. Because ¶ 52 only requires the Department to develop a policy, Phases 2 and 3 are not applicable. Therefore, the Department has achieved substantial compliance with ¶ 52.

**53. The policy will provide clear guidance to all investigators regarding the procedures for handling criminal misconduct allegations, referring them to the Virgin Islands Attorney General's Office or other appropriate agency for possible criminal prosecution, and the entity or individual who should make the determination of whether the complaint should be investigated criminally. The policy shall continue to require the completion of an administrative investigation, irrespective of the initiation or outcome of criminal proceedings.**

**Compliance Assessment:**

The Department has achieved Phase 1 compliance because it has issued the Investigating Misconduct and Citizen Complaints Policy. Because ¶ 53 only requires the Department to develop a policy, Phases 2 and 3 are not applicable. Therefore, the Department has achieved substantial compliance with ¶ 53.

**54. In each investigation, the VIPD will consider all relevant evidence including circumstantial, direct and physical evidence, as appropriate, and make credibility determinations, if feasible. There will be no automatic preference for an officer's statement over a non-officer's statement, nor will the VIPD completely disregard a witness' statement merely because the witness has some connection to the complainant. The VIPD will make efforts to resolve material inconsistencies between witness statements.**

**Compliance Assessment:**

The Department has achieved Phase 1 and 2 compliance because it has issued the Investigating Misconduct and Citizen Complaints Policy and provided related training, but it has not achieved Phase 3 compliance as discussed below. Therefore, the Department is not yet in substantial compliance with ¶ 54.

**VIPD Report:**

The VIPD reports that it continues to implement its Investigating Misconduct and Citizen Complaints Policy. As part of policy implementation,

the Citizen Complaint Process working group continues to conduct audits of citizen complaint investigations to ensure compliance with the requirements of ¶ 54. In addition, the VIPD reports that the Audit Unit will conduct similar audits to identify obstacles with compliance once the Audit Unit is functioning.

The VIPD also acknowledges that Supervisors, and other members of the chain of command, are expected “to be more vigilant and thorough” in their review of investigation files to ensure compliance with the Consent Decree. The VIPD reports that it will conduct ongoing training, including in-service, Roll Call and Commanders Call training, to facilitate compliance with ¶ 54.

#### **OIM Report:**

The VIPD issued the Investigating Misconduct and Citizen Complaint Policy on August 2, 2011. That policy reflects the requirements of ¶ 54 of the Consent Decree. The Department has conducted initial training on this policy, and conducted in-service training during the Second Quarter of 2013. The VIPD, however, has not provided full documentation for this training, including a schedule of remedial training for Supervisors who failed the proficiency examination.

#### **Recommendations:**

Once the Audit Unit is finally operational, the VIPD should develop a process to audit whether VIPD personnel consider all relevant evidence, including circumstantial, direct and physical evidence, as appropriate, and make credibility determinations, if feasible, in all investigations. Audits should also evaluate whether preference is given to an Officer's statement over a non-Officer's, and whether the VIPD makes efforts to resolve material inconsistencies between witness statements. Based on its audits, the Citizen Complaint Process working group should identify any trends or areas for improvement. All audits should be documented and shared with the OIM.

**55. During an investigation, all relevant police activity, including each use of force (i.e., not just the type of force complained about) will continue to be investigated. The investigation will also evaluate any searches or seizures that occurred during the incident. The VIPD will not close an investigation simply because the complaint is withdrawn or the alleged victim is unwilling or unable to provide medical records or proof of injury or the complainant will not provide additional statements or written statements; rather, the investigating agency will continue its investigation as necessary to determine whether the original allegation(s) can be resolved based on the information, evidence, and investigatory procedures and techniques available. In each investigation, the fact that a complainant pled guilty or was found guilty of an offense will not be**

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**considered as evidence of whether a VIPD officer used or did not use a type of force, nor will it justify discontinuing the investigation.**

**Compliance Assessment:**

The Department has achieved Phase 1 and 2 compliance because it has issued the Investigating Misconduct and Citizen Complaints Policy and provided related training, but it has not achieved Phase 3 compliance as discussed below. Therefore, the Department is not yet in substantial compliance with ¶ 55.

**VIPD Report:**

The VIPD reports that it continues to implement its Investigating Misconduct and Citizen Complaints Policy. As part of policy implementation, the Citizen Complaint Process working group continues to conduct audits of citizen complaint investigations to ensure compliance with the requirements of ¶ 54. In addition, the VIPD reports that the Audit Unit will conduct similar audits to identify obstacles with compliance once the Audit Unit is functioning.

The VIPD also acknowledges that Supervisors, and other members of the chain of command, are expected “to be more vigilant and thorough” in their review of investigation files to ensure compliance with the Consent Decree. The VIPD will also conduct ongoing training, including in-service, Roll Call and Commanders Call training, to facilitate compliance with ¶ 54.

**OIM Report:**

The VIPD issued the Investigating Misconduct and Citizen Complaint Policy on August 2, 2011. That policy reflects the requirements of ¶ 55 of the Consent Decree. The Department has conducted initial training on this policy and on-going in-service training, but it has not provided documentation demonstrating that Supervisors are proficient in the requirements of the policy.

During the Third Quarter of 2013, the Police Practices Experts reviewed a completed citizen complaint investigation and concluded that the investigation was closed for reasons other than: the complainant withdrew the complaint; the complainant was uncooperative; the complainant was unwilling or unable to provide medical records or proof of injury; and the complainant pled or was found guilty of an offense. The OIM will continue to assess this requirement in future quarters.

**Recommendations:**

The Citizen Complaint Process working group should develop a process for auditing whether VIPD personnel comply with ¶ 55 of the Consent Decree. The VIPD should also develop a process for identifying personnel who

continually fail to demonstrate knowledge of the policy, and provide remedial training or discipline as appropriate. All audits should be documented and shared with the Compliance Coordinator and the OIM.

**56. The complainant will be periodically kept informed regarding the status of the investigation. Upon completion of the investigation, the complainant will be notified of its outcome, including an appropriate statement regarding whether any non-disciplinary corrective action or disciplinary action was taken.**

**Compliance Assessment:**

The Department has achieved Phase 1 and 2 compliance because it has issued the Investigating Misconduct and Citizen Complaints Policy and provided related training, but it has not achieved Phase 3 compliance as discussed below. Therefore, the Department is not yet in substantial compliance with ¶ 56.

**VIPD Report:**

The IAB continues to decide whether investigations will be assigned to a Zone, retained by the IAB, or referred for possible criminal investigation. Once complaints investigated at the Zone are returned to the IAB, the IAB will review the investigations and complete disposition letters, and send the letter to the complainant.

In compliance with the Action Plan approved by the Court on November 2, 2012, the VIPD continued to draft an audit plan during the Third Quarter of 2013 to audit the Department's handling of citizen complaints. The draft audit plan requires the VIPD to "[f]ind out whether complainants are being notified of the status of his/her complaint and disposition of investigation." Once the audit plan is finalized, the VIPD will audit whether it keeps complainants informed and will report the results of these audits.

**OIM Report:**

During the Third Quarter of 2013, the Police Practices Experts reviewed 1 closed citizen complaint investigation and concluded that the complainant was notified of the outcome of the complaint investigation. The OIM will continue to assess this requirement in future quarters.

**Recommendations:**

The Citizen Complaint Process working group should continue to audit whether VIPD personnel adequately understand and comply with the complaint process. The Citizen Complaint Process working group also should evaluate whether complainants are kept informed about the status of their complaints

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and notified about the outcome. Based on its audits, the Citizen Complaint Process working group should identify any trends or areas for improvement, and develop a process for identifying personnel who continually fail to comply with these requirements, and provide remedial training or discipline as appropriate. All audits should be documented and shared with the Compliance Coordinator and the OIM.

**57. Each allegation in an investigation will be resolved by making one of the following dispositions: a) “Unfounded,” where the investigation determines, by a preponderance of the evidence, that no facts to support that the incident complained of actually occurred; b) “Sustained,” where the investigation determines, by a preponderance of the evidence, that the person's allegation is supported by sufficient evidence to determine that the incident occurred and the actions of the officer were improper; c) “Not Sustained,” where the investigation determines, by a preponderance of the evidence, that there are insufficient facts to decide whether the alleged misconduct occurred; and d) “Exonerated,” where the investigation determines, by a preponderance of the evidence, that the alleged conduct did occur but did not violate VIPD policies, procedures, or training.**

**Compliance Assessment:**

The Department has achieved Phase 1 and 2 compliance because it has issued the Investigating Misconduct and Citizen Complaints Policy and provided related training, but it has not achieved Phase 3 compliance as discussed below. Therefore, the Department is not yet in substantial compliance with ¶ 57.

**VIPD Report:**

The IAB continues to decide whether investigations will be assigned to a Zone, retained by the IAB, or referred for possible criminal investigation. Once complaints investigated at the Zone are returned to the IAB, the IAB will review the investigations and complete disposition letters, and send the letter to the complainant. In addition, the IAB will review the investigations for any deficiencies, and will send a “Return Investigation Form” to the investigating Supervisor specifying any deficiencies and informing the Supervisor that the case will remain open until the deficiencies are corrected. During the Third Quarter of 2013, the IAB submitted a memorandum to Zone Commanders identifying common deficiencies and making recommendations for improving two investigations.<sup>16</sup>

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<sup>16</sup> The cases identified by the IAB with deficiencies were CCT 2013-0072 and CCT 2013-0069.

**OIM Report:**

The VIPD issued its Investigating Misconduct and Citizen Complaint Policy on August 2, 2011. Among other things, that policy requires the Department to resolve all allegations with one of four findings: “unfounded,” “sustained,” “not sustained,” or “exonerated.” The Police Practices Experts have observed that investigations are increasingly resolved with one of the four required findings. For example, in the citizen complaint investigation reviewed by the Police Practices Experts during the Third Quarter of 2013, the VIPD found that the citizen complaint was “not sustained.” The investigation, however, did not address that the Officers failed to document that they detained and transported the complainant to his home. A report or, at a minimum, notes should have been made about the incident.

**Recommendations:**

As previously recommended, the Department should develop a process for auditing whether VIPD personnel comply with ¶ 57. The VIPD should develop a process for identifying personnel who continually fail to comply with these requirements, and provide remedial training or discipline as appropriate. All audits should be documented and shared with the Compliance Coordinator and the OIM. The VIPD should also provide Roll Call and Commanders Call training to reinforce the meaning of and differences between the four disposition findings.

**58. Unit commanders will evaluate each investigation of an incident under their command to identify underlying problems and training needs. Any such problems or needs will be relayed in the form of a recommendation to the appropriate VIPD entity.**

**Compliance Assessment:**

The Department has achieved Phase 1 and 2 compliance because it has issued the Investigating Misconduct and Citizen Complaints Policy and provided related training, but it has not achieved Phase 3 compliance as discussed below. Therefore, the Department is not yet in substantial compliance with ¶ 58.

**VIPD Report:**

The VIPD reports that it will be better able to assess whether commanders are complying with the mandates of ¶ 58 as it develops its self-assessment capabilities.

**OIM Report:**

During the Third Quarter of 2013, the Police Practices Experts reviewed 1 closed citizen complaint investigation in which unit commanders identified underlying problems and training needs. There was no evidence, however, that these problems or training needs were relayed to the appropriate VIPD entity, or that any recommended corrective action was taken.

**Recommendations:**

The Department should develop a process for auditing whether VIPD personnel comply with ¶ 58. Unit Commanders must evaluate investigations to identify underlying problems and training needs. Commanders must then relay any problems or training needs to the appropriate VIPD entity. The VIPD should also develop a process for identifying personnel who continually fail to comply with requirements and provide remedial training or discipline as appropriate. All audits should be documented and shared with the Compliance Coordinator and the OIM.



## Management and Supervision

### Joint Action Plan Requirements

Joint Action Plan Requirements	Status
Revisions to Disciplinary [Matrix] will be forwarded to DOJ <b>by November 1, 2012.</b>	<b>Satisfied.</b> The VIPD did not comply with the Joint Action Plan's November 1, 2012 deadline, but submitted a revised version of the Disciplinary Matrix to the DOJ on January 18, 2013. After reviewing DOJ approval, the VIPD issued a revised version of the Disciplinary Policy and Matrix during the Third Quarter of 2013.
<b>Beginning on November 30, 2012</b> , at least once per month, the Deputy Chief during Commanders Call, will address Decree compliance issues, including timely completion of use of force reports.	<b>Not Satisfied.</b> The VIPD did not provide the OIM with documentation demonstrating compliance with this requirement.
<b>Beginning on November 30, 2012</b> , working group members will conduct regular reviews, but no less frequently than weekly, to ensure that all Blue Team programs are installed on all Zone Command computers and are also fully functioning.	<b>Not Satisfied.</b> The VIPD did not provide the OIM with documentation demonstrating compliance with this requirement. The VIPD has from time-to-time provided information about the operating status of Blue Team at various locations.
<b>By November 30, 2012</b> , VIPD will provide DOJ with an action plan for achieving sufficient numbers of staff to input current and historic data or outlining how it intends to use existing staff to accomplish this task. The plan will include an implementation date subject to the agreement of the parties.	<b>Satisfied, but additional work needed.</b> On December 31, 2012, the DOJ provided comments on the VIPD's action plan. Among other things, the DOJ sought clarification on what, if anything, the VIPD plans to do if there is a lack of funding for new Supervisors. Recognizing the Department's fiscal constraints, the VIPD should address that possibility and plan accordingly.
Working group members will conduct bi-monthly reviews <b>commencing November 30, 2012</b> to ensure compliance with A through K [of Consent Decree ¶ 60].	<b>Not Satisfied.</b> The VIPD did not provide the OIM with documentation demonstrating compliance with this requirement.
Quarterly review <b>commencing November 30, 2012</b> will be conducted	<b>Not Satisfied.</b> The VIPD did not provide the OIM with documentation

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to ensure compliance [with Consent Decree ¶ 65].	demonstrating compliance with this requirement.
Working group members will conduct bi-monthly reviews <b>commencing November 30, 2012</b> to ensure compliance with a through g [of Consent Decree ¶ 66].	<b>Not Satisfied.</b> The VIPD did not provide the OIM with documentation demonstrating compliance with this requirement.
VIPD will maintain documentation of how it identified and addressed patterns of officer conduct based on existing databases and resources and provide this documentation on a quarterly basis to the Monitor, <b>starting in the 3rd quarter of 2012.</b>	<b>Not Applicable.</b> Because the Department appears to be relying solely on IAPro for risk management, this requirement is no longer applicable.
Finalize Audit Protocol and submit to DOJ <b>by November 30, 2012.</b>	<b>Satisfied.</b> The VIPD submitted a draft version of the Audit and Inspection Policy to the DOJ for review on November 30, 2012. The VIPD issued the Audit and Inspection Policy during the Third Quarter of 2013.
Blue Team technical issues will be resolved, training will be ongoing, and all districts will receive a round of training <b>by January 31, 2013.</b>	<b>Satisfied.</b> The VIPD provided the OIM with documentation regarding Blue Team training on the St. Thomas/St. John District during the First Quarter of 2013, and provided similar documentation for the St. Croix District in the Second Quarter of 2013.
Competency-based training of all staff <b>by Feb. 15, 2013</b> and ongoing documented refresher training through in-services and Roll Call/Commanders Call.	<b>Not Satisfied.</b> The VIPD did not provide the OIM with documentation demonstrating compliance with this requirement.
Auditors to attend training re: conducting audits by <b>April 30, 2013.</b>	<b>Satisfied.</b> The VIPD did not comply with the Joint Action Plan's April 30, 2013 deadline, but Audit Training was held on both Districts during the Third Quarter of 2013.
By <b>June 30, 2013</b> , in consultation with DOJ, implement audit tools to ensure staff are complying with the policies. This ensures periodic quality checks on data entered. Also ensure that lapses in policy implementation are addressed by system of	<b>Not Satisfied.</b> The VIPD continued to work on its audit tools during the Second and Third Quarters of 2013. The DOJ approved a revised version of the VIPD's audit tools during the Fourth Quarter of 2013. The VIPD has not yet implemented the audit tools.

documented discipline and/or re-training.	
Train staff regarding Audit Protocol by <b>June 30, 2013</b> .	<b>Satisfied.</b> Audit Training was held on both Districts during the Third Quarter of 2013. That training covered the Audit and Inspection Policy.
Audit will commence by <b>June 30, 2013</b> .	<b>Not Satisfied.</b> The VIPD did not provide the OIM with documentation demonstrating compliance with this requirement. While the VIPD attempted to conduct use of force audits during the First and Second Quarters of 2013, those efforts were not successful. The Citizen Complaint Process working group has conducted some inspections within its area of responsibility.
By <b>June 30, 2013</b> , in consultation with DOJ, implement audit tools to ensure staff are complying with the policies, including (but not limited to) review for inclusion of written Police Commissioner extension approval in investigatory files. Also ensure that lapses in policy implementation are addressed by system of documented discipline and/or re-training.	<b>Not Satisfied.</b> The VIPD continued to work on its audit tools during the Second and Third Quarters of 2013. The DOJ approved a revised version of the VIPD's audit tools during the Fourth Quarter of 2013. The VIPD has not yet implemented the audit tools.

**59. The VIPD will develop and implement a risk management system to include a new computerized relational database or paper system for maintaining, integrating, and retrieving information necessary for supervision and management of the VIPD. Priority will be given to the VIPD obtaining any established program and system. The VIPD will regularly use this data to promote civil rights and best police practices; to manage risk and liability; and to evaluate the performance of VIPD officers across all ranks, units and shifts.**

**Compliance Assessment:**

The Department has achieved Phase 1 and 2 compliance because it has issued policies in compliance with ¶ 59 of the Consent Decree and has provided related training, but it has not achieved Phase 3 compliance as discussed below. Therefore, the VIPD is not yet in substantial compliance with ¶ 59 of the Consent Decree.

**VIPD Report:**

The VIPD reports that it continued to use IAPro during the Third Quarter of 2013 to generate reports about uses of force and citizen complaints on a weekly, monthly, and quarterly basis. Those reports are disseminated through the chain of command. According to the VIPD, all Supervisors have access to IAPro, which allows them to view the status of use of force and citizen complaint investigations. Pursuant to the Department's EIP Policy, Supervisors, Managers, and Deputy Chiefs are required to regularly review reports generated by IAPro; IAPro can track whether the required reviews are being completed.

**OIM Report:**

As previously reported, the Department has made substantial progress towards implementing IAPro. The Joint Action Plan requires members of the Management and Supervision working group to "conduct regular reviews . . . to ensure that all Blue Team programs are installed on all Zone Command computers and are also fully functioning." The Chairperson of the Management and Supervision working group initiated a process during the First Quarter of 2013 for the Department's Management and Information Systems Unit ("MIS") and the Zones to submit biweekly reports documenting the required reviews. Also during the First Quarter of 2013, the Management and Supervision working group issued a memorandum entitled "Blue Team Inspection Territory Wide," which requires all Commanders to submit weekly Blue Team functionality reports. The VIPD also provided documentation during the Third Quarter of 2013 confirming the functionality of Blue Team at certain VIPD facilities on St. Thomas. The VIPD has not provided similar documentation for St. John or the St. Croix District.

During the First Quarter of 2013, the VIPD provided the OIM with records for Blue Team and EIP training that took place in the St. Thomas/St. John District; the VIPD provided the same training in the St. Croix District during the Second Quarter of 2013. The records for the training conducted on St. Thomas contained, for the first time, a breakdown of the personnel who attended the training and those who did not.

The EIP appears to be progressing at different rates in the two Districts. While there is room for significant improvement, the Department is making progress implementing the EIP in the St. Croix District. For example, the Police Practices Experts have seen some basic documentation from the St. Croix District detailing how alerts (relating to potentially problematic behavior by VIPD personnel) were handled. The Police Practices Experts have not seen similar documentation for the St. Thomas/St. John District.

**Recommendations:**

Even though the Department has implemented certain aspects of IAPro, the RMS Protocol needs to be fully implemented by, among other things, providing on-going training on the Department's EIP and conducting the required beta test (i.e., an initial full scale test) of the RMS. The VIPD should also use the Blue Team and EIP training records described above as a model for how to present training records to the OIM going forward. The VIPD should also consider modifying the PowerPoint presentation that it previously provided regarding the EIP program for use during Roll Call and Commanders Call training sessions.

The VIPD also needs to document every step that it takes relating to the EIP process, including when IAPro first generated an alert, what the Department did in response to that alert (counseling, remedial training, discipline, etc.), and the outcome of the Department's response. The St. Thomas/St. John District, in particular, needs to start documenting the EIP process. The OIM will continue to review the EIP process in future quarters, including EIP assessment and audit forms.

**60. The new risk management system will collect and record the following information: a) all uses of force; b) canine bite ratios; c) the number of canisters of chemical spray used by officers; d) all injuries to prisoners; e) all instances in which force is used and a subject is charged with "resisting arrest," "assault on a police officer," "disorderly conduct," or "obstruction of official business;" f) all critical firearm discharges, both on-duty and off-duty; g) all complaints (and their dispositions); h) all criminal proceedings initiated, as well as all civil or administrative claims filed with, and all civil lawsuits served upon, the Territory and its officers, or agents, resulting from VIPD operations or the actions of VIPD personnel; i) all vehicle pursuits; j) all incidents involving the pointing of a firearm (if any such reporting is required); and k) all disciplinary action taken against officers.**

**Compliance Assessment:**

The Department has achieved Phase 1 and 2 compliance because it has issued policies in compliance with ¶ 60 of the Consent Decree and provided related training, but it has not achieved Phase 3 compliance as discussed below. Therefore, the VIPD is not yet in substantial compliance with ¶ 60 of the Consent Decree.

**VIPD Report:**

The VIPD reports that the Management and Supervision working group held multiple meetings during the Third Quarter of 2013 regarding the Department's arrest database. Specifically, the meetings focused on finalizing

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the electronic arrest form that will be used to enter information into the arrest database and creating an interim process to document arrests until the Department implements new software to manage that process (which is described below); the VIPD also reports that it is working on a separate form to document detentions that do not result in arrests. Participants at those meetings included representatives from the MIS, the Planning and Research Bureau, the EIP Coordinator, the IAB, the Compliance Coordinator, and the Compliance Manager. The VIPD also reports that the DOJ approved a revised version of the Department's Canine Policy during the Third Quarter of 2013, which was subsequently signed by the Commissioner.

MIS is currently working to implement Smart Cop software, which features a records management system and field reporting function. The VIPD expects that it will take approximately four to five months to implement Smart Cop. According to the VIPD, the Virgin Islands Territorial Emergency Management Agency ("VITEMA") is currently using the CAD component of Smart Cop, and the Bureau of Corrections is using the Jail component. The goal is for VITEMA, the Bureau of Corrections, and the VIPD to eventually be able to access information across agencies. While MIS works to implement Smart Cop, the VIPD is developing an interim system to more systematically collect arrest data. Once finalized, this interim arrest procedure will be disseminated to all Department personnel.

The VIPD previously reported that the Chairperson of the Management and Supervision working group submitted a memorandum to the Commissioner on April 30, 2013, asking that: (1) a protocol be established for the VIAG to notify the VIPD of all criminal and civil proceedings involving the Territory, the VIPD, and VIPD personnel; and (2) a request be submitted to the Director of VITEMA to provide the VIPD with data on all VIPD personnel involved in vehicle pursuits.

During the Third Quarter of 2013, the Commissioner submitted a memorandum to the VIAG (in response to the Chairperson of the Management and Supervision working group's request) relating to criminal and civil proceedings involving the Territory, the VIPD, and VIPD personnel. On September 25, 2013, a representative of the VIAG stated that the VIAG was compiling the requested information. It is unclear whether the Commissioner contacted VITEMA about providing data relating to vehicle pursuits.

The Chairperson of the Management and Supervision working group also sent a memorandum to the Acting Director of Training on April 30, 2013 seeking documentation about the number of canisters of O.C. Spray used by VIPD personnel. Additionally, the Chairperson of the Management and Supervision working group circulated a memorandum on September 18, 2013 to all Commanders in the St. Thomas/St. John District directing them to inspect the O.C. Spray canisters carried by their subordinates. The objective of

the inspection was to confirm that O.C. Spray canisters were not expired. The memorandum required all Commanders to submit documentation regarding these inspections by September 23, 2013.

The VIPD also reports that the Management and Supervision working group is working to ensure that each of the data elements specified in ¶ 60 is being collected and entered into IAPro. The Management and Supervision working group plans to conduct inspections to confirm.

### **OIM Report:**

The VIPD's Data Input Plan requires the Department to collect the data specified in ¶ 60 of the Consent Decree. The Management and Supervision working group reported at the end of the Fourth Quarter of 2012 that it was creating forms, drafting procedures, and developing a system to verify the accuracy of the data collected under subparagraphs a through k. The OIM has not seen any documentation relating to those efforts.

During the First Quarter of 2013, the OIM learned that the VIPD continued to have problems accessing required information that was maintained by other government agencies. For example, the VIPD appears to have limited access to information from the VIAG regarding court proceedings (criminal and civil) involving VIPD personnel and from VITEMA regarding vehicle pursuits.<sup>17</sup> The VIPD's Data Input Plan requires that such information be collected and entered into the RMS. The VIPD appears to have made some progress collecting (or having the VIAG collect for them) information about court proceedings, but does not appear to have made progress collecting information about vehicle pursuits.

The OIM learned during the Second Quarter of 2013 that a Department audit of the RMS revealed that certain data sources were not being collected as required by the Data Input Plan. Specifically, the VIPD was not collecting information about canine bite ratios or about the number of canisters of O.C. Spray being used by VIPD personnel. Moreover, the fact that an internal VIPD audit identified these deficiencies underscores the important role that the Audit Unit should play in helping the VIPD achieve and maintain substantial compliance.

The VIPD previously reported that it held training on the Data Input Plan during the Second Quarter of 2013 on both Districts. The VIPD provided training on the Department's RMS Protocol and EIP at the same time. The VIPD

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<sup>17</sup> As required by subparagraph (h), which, in part, requires the VIPD's RMS system to record "all civil or administrative claims filed with, and all civil lawsuits served upon, the Territory and its officers, or agents, resulting from VIPD operations or the actions of VIPD personnel," the VIAG provided the IAB with information about civil claims filed since 2009 during the Fourth Quarter of 2013. The OIM will report more fully on the information provided in the next quarterly report.

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provided the OIM with lesson plans for the EIP training, but has not provided documentation (like what the Department provided for Blue Team training) detailing who was eligible/should have attended the training, who attended the training, who passed any post-training competency tests, or any related re-training or discipline that was required.

During the Third Quarter of 2013, the VIPD provided the OIM with a document titled “Quarterly Patterns and Trending Data: 3rd Qtr 2013.” As the title suggests, that document provides various statistics relating to the Department’s use of force and citizen complaints. Going forward, the VIPD should analyze the patterns and trends reflected in the document. Generating documents like this and forwarding them to the OIM (while appreciated) is not enough. For example, during the Third Quarter of 2013, one-third of all complaints from the St. Thomas/St. John District involved discourtesy. The OIM learned during the Fourth Quarter of 2013 that the VIPD has initiated a request for customer service training from the Chamber of Commerce to assist regarding these types of complaints.

Similarly, a high percentage of arrests in both Districts during the Third Quarter of 2013 were so called “discretionary arrests” for offenses such as disobeying police orders, disturbing the peace, and interfering with an officer. While those arrests may have been appropriate under the circumstances, the VIPD should consider whether similar behavior can be addressed without resorting to an arrest. The Department’s senior managers, including the Commissioner, should review the Department’s patterns and trends relating to uses of force and citizen complaints.

**Recommendations:**

Even though the Department has implemented certain aspects of IAPro, the RMS Protocol needs to be fully implemented by, among other things, collecting all of the information required by the Data Input Plan. To the extent that the VIAG has access to any of the required information, it should establish a protocol to share that information. The VIPD should also provide the OIM with documentation regarding its efforts to collect all of the information required by the Data Input Plan. Once the VIPD comes into compliance with the Data Input Plan, the Department should generate quarterly IAPro reports demonstrating that data from subparagraphs a through k are captured in the Department’s RMS. The Department should also provide the OIM with a report for the training that it held on the Data Input Plan, the RMS Protocol, and the EIP near the end of the Second Quarter of 2013.

The VIPD should continue to provide the OIM with pattern and trend data relating to uses of force and citizen complaints. The Department should also analyze that data and provide a summary of its conclusions and proposed remedial actions, if any, to the OIM.



**61. The new risk management system will include, for the incidents included in the database, appropriate identifying information for each involved officer (e.g., name, badge number, shift and supervisor) and civilian (e.g., race, ethnicity or national origin, if available).**

**Compliance Assessment:**

The Department has achieved Phase 1 and 2 compliance because it has issued policies in compliance with ¶ 61 of the Consent Decree and has provided related training, but it has not achieved Phase 3 compliance as discussed below. Therefore, the VIPD is not yet in substantial compliance with ¶ 61 of the Consent Decree.

**VIPD Report:**

The VIPD reports that it continues to comply with ¶ 61 by entering appropriate identifying information (name, badge number, and shift Supervisor) for each Officer involved in an incident.

**OIM Report:**

To help track VIPD personnel (who may change job functions, names, etc.), the Commissioner issued a directive during the Fourth Quarter of 2011 ordering 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 VITEMA. Officers are required to use their PDNs (which they keep for their entire career) on all police reports, rather than their badge numbers as was the previous practice. The OIM will review VIPD audits regarding compliance with ¶ 61 of the Consent Decree in subsequent quarters.

**Recommendations:**

The Department should audit whether Officers are using their PDNs on all police reports. During the Third Quarter of 2013, the OIM was informed that the VIPD conducted an audit of PDNs during a training exercise. This audit was not retained, and the OIM never saw the document itself. These audits should be documented and shared with the Compliance Coordinator and the OIM. In addition, the VIPD should provide the OIM with quarterly IAPro reports demonstrating that appropriate identifying information for each involved Officer and civilian is captured by the Department's RMS, and a list of the PDNs assigned to all VIPD personnel.

**62. Within 120 days of the implementation of the new risk management system, or later with the agreement of DOJ, the VIPD will prepare, for the review and approval of DOJ, a plan for including appropriate fields and values of new and historical data into the risk management system (the**

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**"Data Input Plan"). The Data Input Plan will identify the data to be included and the means for inputting such data (direct entry or otherwise), the specific fields of information to be included, the past time periods for which information is to be included, the deadlines for inputting the data, and the responsibility for the input of the data. The Data Input Plan will include historical data that is up-to-date and complete in the risk management system. The VIPD and DOJ will together seek to ensure that the protocol receives final review and approval within 30 days after it is presented for approval.**

**Compliance Assessment:**

The Department has achieved Phase 1 compliance because it has issued the Data Input Plan in compliance with ¶ 62 of the Consent Decree. Because ¶ 62 of the Consent Decree only requires the Department to develop a policy, Phase 2 and 3 are not applicable. Therefore, the VIPD is in substantial compliance with ¶ 62 of the Consent Decree.

**63. The VIPD will, within 120 days, prepare for the review and approval of DOJ, and thereafter implement, a protocol for using the risk management system. The VIPD will submit for the review and approval of DOJ all proposed modifications to the protocol prior to implementing such modifications.**

**Compliance Assessment:**

The Department has achieved Phase 1 and 2 compliance because it has issued policies in compliance with ¶ 63 of the Consent Decree and has provided related training, but it has not achieved Phase 3 compliance as discussed below. Therefore, the VIPD is not yet in substantial compliance with ¶ 63 of the Consent Decree.

**VIPD Report:**

The VIPD Reports that it has adopted the RMS Protocol and provided related training during the Second Quarter of 2013. The VIPD also reports that the Committee is currently reviewing draft versions of the forms that will be used to document EIP interventions.

**OIM Report:**

After several years of work, the DOJ approved the Department's RMS Protocol on October 2, 2012. As previously reported, 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. When reporting arrest and use of force

data, 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 is not currently capable of providing these ratios because its arrest records are not uniform or reliable. The VIPD has been working to consolidate all of its arrest records into a single database for several quarters. Although the VIPD appears to be close to finalizing that database, it has not yet done so. The Parties agree that the Department will not be in compliance with the Consent Decree until it implements a ratio-based RMS Protocol.

### **Recommendations:**

Once the Department can rely on its arrest records, the VIPD must begin to use ratios, rather than numerical thresholds, as triggers for supervisory review of Officers' conduct. The VIPD should also provide the OIM with audits documenting the Department's compliance with ¶ 63 of the Consent Decree.

**64. The protocol for using the risk management system will include the following provisions and elements: a) The protocol is comprised of the following components: data storage, data retrieval, reporting, data analysis, pattern identification, supervisory assessment, supervisory intervention, documentation and audit; b) The protocol will require the automated system to analyze the data according to the following criteria: (i) number of incidents for each data category by individual officer and by all officers in a unit; (ii) average level of activity for each data category by individual officer and by all officers in a unit; and (iii) identification of patterns of activity for each data category by individual officer and by all officers in a unit; c) The protocol will require the system to generate reports on a monthly basis describing the data and data analysis and identifying individual and unit patterns; d) The protocol will require that VIPD deputy chiefs, managers, and supervisors will review, on a regular basis but not less than quarterly, system reports, and will evaluate individual officer, supervisor, and unit activity; e) The protocol will require that VIM deputy chiefs, managers, and supervisors initiate intervention for individual officers, supervisors and for units based on appropriate activity and pattern assessment of the information contained in the risk management system; f) The protocol will require that intervention options include discussion by deputy chiefs, managers, supervisors, and officers; counseling; training; and supervised, monitored, and documented action plans and strategies designed to modify activity. All interventions will be documented in writing and entered into the automated system (appropriate intervention options will be employed based on the evaluation described in subsection (e) above); g) The protocol will specify that actions taken as a result of information from the risk management system be based on all relevant and appropriate information, including the nature of the officer's assignment, crime trends and crime**

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**problems, and not solely on the number or percentages of incidents in any category of information recorded in the risk management system; h) The protocol will require that VIPD deputy chiefs, managers, and supervisors will promptly review the risk management system records of all officers recently transferred to their sections and units; i) The protocol will require that VIPD deputy chiefs, managers, and supervisors be evaluated on their ability to use the risk management system to enhance effectiveness and reduce risk; (j) The protocol will require that the system be managed and administered by the Internal Affairs Unit of the VIPD. The IAU of the VIPD will conduct quarterly audits of the system to ensure action is taken according to the process described above; k) The protocol will require regular reviews, at no less than quarterly intervals, by appropriate managers of all relevant risk management system information to evaluate officer performance territory-wide, and to evaluate and make appropriate comparisons regarding the performance of all VIPD units in order to identify any significant patterns or series of incidents.**

**Compliance Assessment:**

The Department has achieved Phase 1 compliance because it has issued the RMS Protocol in compliance with ¶ 64 of the Consent Decree. Because ¶ 64 of the Consent Decree only requires the Department to develop a policy Phase 2 and 3 are not applicable. Therefore, the VIPD is in substantial compliance with ¶ 64 of the Consent Decree.

**65. The VIPD will maintain all personally identifiable information about an officer included in the risk management system during the officer's employment with the VIPD for at least five years. Information necessary for aggregate statistical analysis will be maintained indefinitely in the risk management system. On an ongoing basis, the VIPD will enter information into the risk management system in a timely, accurate, and complete manner, and maintain the data in a secure and confidential manner.**

**Compliance Assessment:**

The Department has achieved Phase 1 and 2 compliance because it has issued policies in compliance with ¶ 65 of the Consent Decree and has provided related training, but it has not achieved Phase 3 compliance as discussed below. Therefore, the VIPD is not yet in substantial compliance with ¶ 65 of the Consent Decree.

**VIPD Report:**

The VIPD reports that it has retained data for all former Officers since the Department's RMS became operational. The VIPD also reports that IAPro

allows authorized users to prohibit data for specific incidents from being purged or deleted.

The Department also reports that it is attempting to hire at least one EIP analyst per District to assist the EIP Manager, who is located in the St. Thomas/St. John District, and the EIP Coordinator, who is located in the St. Croix District. The VIPD has included a request for two analysts in its 2014 proposed budget, which has not yet been approved by the legislature. As an interim measure, the Commissioner contacted the Territory's Division of Personnel about temporarily assigning qualified and experienced staff from other government agencies to the VIPD on a temporary basis.

#### **OIM Report:**

The OIM did not assess the VIPD's compliance with ¶ 65 of the Consent Decree during the Third Quarter of 2013.

#### **Recommendations:**

The VIPD should explain whether, and under what circumstances, it is utilizing the IAPro feature that allows the VIPD to prohibit data for specific incidents from being purged or deleted. We made this same request in the Second Quarterly Report of 2013, but the VIPD did not provide an explanation. With limited exceptions for clerical errors, the Department should not delete any records from IAPro. Moreover, to the extent that the VIPD needs to delete data from IAPro, the process should be documented and approved by the Director of the IAB.

The VIPD should also provide the OIM with an update about its efforts to hire or borrow data analysts from other government agencies. However the VIPD chooses to staff those positions, it is crucial that the VIPD staff those positions. The VIPD will not be able to adequately monitor its EIP without additional help.

**66. The new risk management system will be purchased off the shelf and customized by VIPD. Alternatively, the new risk management system may be developed and implemented according to the following schedule: a) Within 150 days of the effective date of this Agreement, subject to the review and approval of DOJ, the VIPD will issue a Request for Proposal (RFP); b) Within 270 days of the issuance of the RFP, or later with the agreement of DOJ, the VIPD will select the contractor to create the risk management system; c) Within 150 days of the effective date of this Agreement, the VIPD will submit the protocol for using the risk management system to DOJ for review and approval. The VIPD will share drafts of this document with DOJ and the Monitor (a position described in Section VII) to allow DOJ and the Monitor to become familiar with the document as it develops and to provide informal comments on it. The**

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**VIPD and DOJ will together seek to ensure that the protocol receives final approval within 30 days after it is presented for review and approval; d) Within 14 months of selecting the contractor, the VIPD will have ready for testing a beta version of the risk management system consisting of (i) server hardware and operating systems installed, configured and integrated with the VIPD's existing automated systems; (ii) necessary data base software installed and configured; (iii) data structures created, including interfaces to source data; and (iv) the use of force information system completed, including historic data. DOJ and the Monitor will have the opportunity to participate in testing the beta version using use of force data and test data created specifically for purposes of checking the risk management system; e) The risk management system computer program and computer hardware will be operational and fully implemented within 20 months of the selection of the risk management system contractor.**

**Compliance Assessment:**

The Department has achieved Phase 1 and 2 compliance because it has issued policies in compliance with ¶ 66 of the Consent Decree and has provided related training, but it has not achieved Phase 3 compliance as discussed below. Therefore, the VIPD is not yet in substantial compliance with ¶ 66 of the Consent Decree.

**VIPD Report:**

The VIPD reports that it purchased and installed IAPro software, along with its companion program Blue Team, in both Districts. The OIM requested confirmation from the VIPD regarding whether it has undertaken the required beta test of its RMS. The VIPD will provide further information about its efforts to conduct a beta test in future status reports.

**OIM Report:**

The OIM has requested information relating to any beta testing (i.e., an initial full scale test) that is planned for the Department's RMS. While some VIPD personnel have asserted that the required beta test has been completed, the VIPD has not responded to our requests for documentation. During the Third Quarter of 2013, the OIM again attempted to verify whether the VIPD has conducted a beta test. In addition, the Compliance Coordinator sent an email on behalf of the OIM to the Director of MIS requesting documentation. The Director of MIS has not yet provided any documentation.

**Recommendations:**

Even though the Department has implemented certain aspects of IAPro, the RMS Protocol needs to be fully implemented. The VIPD should respond to the OIM's request for information about the required beta tests.

**67. Prior to implementation of the new risk management system, the VIPD will continue to use existing databases and resources to the fullest extent possible, to identify patterns of conduct by VIPD officers or groups of officers.**

**Compliance Assessment:**

Because the Department appears to rely on IAPro for risk management, this requirement is no longer applicable.

**68. Following the initial implementation of the risk management system, and as experience and the availability of new technology may warrant, the VIPD may propose to add, subtract, or modify data tables and fields, modify the list of documents scanned or electronically attached, and add, subtract, or modify standardized reports and queries. The VIPD will submit all such proposals for review and approval by DOJ before implementation.**

**Compliance Assessment:**

Because the Department has not yet fully implemented its RMS, this requirement is not yet applicable.

**69. The VIPD will develop a protocol for conducting audits. The protocol will be used by each officer or supervisor charged with conducting audits. The protocol will establish a regular and fixed schedule to ensure that such audits occur with sufficient frequency, and cover all VIPD zones.**

**Compliance Assessment:**

The Department has achieved Phase 1 and 2 compliance because it has issued policies in compliance with ¶ 69 of the Consent Decree and has provided related training, but it has not achieved Phase 3 compliance as discussed below. Therefore, the VIPD is not yet in substantial compliance with ¶ 69 of the Consent Decree.

**VIPD Report:**

The VIPD reports that the Commissioner approved the Audit and Inspection Policy during the Third Quarter of 2013, which reflects the

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requirements contained in ¶ 69. The VIPD also reports that training on the Audit and Inspection Policy was scheduled to take place in both Districts in October 2013; those trainings took place as scheduled.

**OIM Report:**

The VIPD issued the Audit and Inspection Policy in September 2013, and provided related training in October 2013. Despite providing training more than a month ago, the VIPD has not provided any documentation showing that the Audit Unit is operational. During the Third Quarter of 2013, the OIM learned that the Commissioner has decided to wait until supervisory promotions take place (hopefully in early 2014) to appoint members to the Audit Unit. Given the importance of the Audit Unit, there is no reason for this delay. The Commissioner should appoint members to the Audit Unit immediately, even if only on a part time basis. He could then supplement or change those appointments following supervisory promotions. The Commissioner should also consider consolidating the Audit Committee (which has been inactive in recent quarters) into the Audit Unit. To the extent that the Audit Committee is currently staffed, those individuals could be better utilized as members of the Audit Unit.

**Recommendations:**

The VIPD should consider appointing VIPD personnel to the Audit Unit on a full time basis. Because of the overlap between the Consent Decree and the Audit Unit, the Consent Decree Coordinator and/or Consent Decree Manager are well positioned to take leadership roles in the Audit Unit. The OIM learned during the Third Quarter of 2013 that the Compliance Manager attended audit training, but that the Compliance Coordinator did not. The Compliance Coordinator should attend any future audit trainings and be an active part of the Audit Unit. The OIM is also hopeful that the Commissioner and Assistant Commissioner will take active and direct roles in the leadership and supervision of the Audit Unit. To that end, the VIPD should provide documentation showing that the Commissioner met, at least quarterly, with the Department's management to review all RMS data and identify significant patterns of misconduct.

**70. The VIPD will continue to utilize a disciplinary matrix to take into account an officer's violations of different rules, rather than just repeated violations of the same rule. The VIPD will further revise this matrix to increase the penalties for uses of excessive force, improper searches and seizures, discrimination, or dishonesty, to reflect the seriousness of those infractions. The revised disciplinary matrix will provide the VIPD with the discretion to impose any appropriate punishment when the VIPD believes the officer's misconduct exhibits a lack of fitness for duty. This revised matrix will be subject to the review and approval of DOJ.**



**Compliance Assessment:**

The Department has achieved Phase 1 compliance because it has issued the Disciplinary Matrix in compliance with ¶ 70 of the Consent Decree. Because ¶ 70 of the Consent Decree only requires the Department to develop a policy, Phase 2 and 3 are not applicable. Therefore, the VIPD is in substantial compliance with ¶ 70 of the Consent Decree.

**71. VIPD policy will continue to identify clear time periods by which the various steps of a complaint adjudication process should be completed, from complaint receipt to the imposition of discipline, if any. Absent exigent circumstances, extensions will not be granted without the Police Commissioner's written approval and notice to the complainant. In the limited circumstances when an extension is necessary, appropriate tolling provisions will be outlined in the policy.**

**Compliance Assessment:**

The Department has achieved Phase 1 and 2 compliance because it has issued policies in compliance with ¶ 71 of the Consent Decree and has provided related training, but it has not achieved Phase 3 compliance as discussed below. Therefore, the VIPD is not yet in substantial compliance with ¶ 71 of the Consent Decree.

**VIPD Report:**

The VIPD reports that extending the statute of limitations for instituting disciplinary actions from 50 to 90 days is “an unresolved matter” because the Department’s contracts with the Police Benevolent Association (“PBA”) and the Law Enforcement Supervisors Union (“LESU”) (the unions that represent VIPD Officers and Supervisors, respectively) would have to be amended.

The Chairperson of the Management and Supervision working group submitted a memorandum to the Commissioner on September 24, 2013 requesting that, as part of upcoming negotiations with the PBA and the LESU, the VIPD should seek to extend the statute of limitations from 50 working days to 90 working days; the IAB has recommended further extending the period to 120 working days. Because the VIPD’s contracts with the PBA and the LESU have both expired, the Chairperson of the Management and Supervision working group recognized that this is an “opportune time to address the statute of limitation” issue.

The VIPD also reports that time limits relating to the complaint adjudication process and the granting of extensions are outlined in the citizen complaint policies.

**OIM Report:**

As an initial matter and as the OIM previously reported, the VIPD appears to be confusing the time period in which the Department can initiate administrative charges against an Officer with the timelines set forth in the Investigating Misconduct and Citizen Complaint Policy. The unions' reported refusal to extend the 50-day statute of limitations has no bearing on the Department's ability to comply with internal investigative deadlines. In addition, while the Department's policies set deadlines for various steps in the complaint adjudication process, the VIPD frequently fails to comply with those deadlines.

The OIM agrees with the Chairperson of the Management and Supervision working group and the IAB that the statute of limitations should be extended. While we would favor the longer 120 working day period advocated by the IAB, a 90 working day period would be a vast improvement from the status quo. The VIPD should make this issue a priority in negotiating new contracts with the PBA and LESU.

Although the Investigating Misconduct and Citizen Complaint Policy sets forth "clear time periods by which the various steps of a complaint adjudication process should be completed[,]" many of the Department's citizen complaint investigations are overdue. Moreover, even when the investigation file indicates that a stay was granted, there is often too little information in the file to determine whether the stay was justified.

**Recommendations:**

The Management and Supervision working group, together with the Citizen Complaint Process working group and the IAB, should audit and document Department personnel's compliance with the relevant time periods. The VIPD should also hold Officers accountable for violating deadlines concerning the adjudication of investigations. The VIPD should provide the OIM with quarterly IAPro reports reflecting the status of all pending citizen complaint investigations so we can monitor the Department's compliance with the required deadlines on a regular basis.

**72. Absent exceptional circumstances, the VIPD will not take only non-disciplinary corrective action in cases in which the disciplinary matrix indicates the imposition of discipline. In a case where discipline has been imposed on an officer, the VIPD must also consider whether non-disciplinary corrective action is required.**

**Compliance Assessment:**

The Department has achieved Phase 1 and 2 compliance because it has issued policies in compliance with ¶ 72 of the Consent Decree and has

provided related training, but it has not achieved Phase 3 compliance as discussed below. Therefore, the VIPD is not yet in substantial compliance with ¶ 72 of the Consent Decree.

**VIPD Report:**

The VIPD reports that the DOJ approved its revised Disciplinary Matrix during the Third Quarter of 2013, and that training is expected to take place in October 2013. The VIPD also acknowledges that it needs to audit the Department's compliance with ¶ 72.

**OIM Report:**

The OIM did not assess the VIPD's compliance with ¶ 72 of the Consent Decree during the Third Quarter of 2013.

**Recommendations:**

The Management and Supervision working group should promptly implement the Disciplinary Matrix by providing corresponding training. In order to help the OIM evaluate the Department's compliance with ¶ 72 of the Consent Decree, it should provide the OIM with documentation from disciplinary hearings, including the charges, findings, and any discipline and/or non-disciplinary corrective action that was taken.

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**Training****Joint Action Plan Requirements**

<b>Joint Action Plan Requirements</b>	<b>Status</b>
By <b>November 30, 2012</b> , finalize Audit Protocol and submit to the DOJ and the Monitors' subject matter experts.	<b>Satisfied.</b> On November 30, 2012, the VIPD submitted a final Audit and Inspection Policy to the DOJ for review. That policy was signed by the Commissioner during the Third Quarter of 2013.
By <b>November 30, 2012</b> , the Director of Training will develop and implement a tracking system to track training attendance and shall periodically test for proficiency on the policies.	<b>Not satisfied.</b> The VIPD did not provide the OIM with a report documenting that the Department has such a tracking system or periodically tests for proficiency with policies.
By <b>November 30, 2012</b> , implement system to ensure all staff are trained on policies (i.e., a tracking system).	<b>Not satisfied.</b> The VIPD did not provide the OIM with documentation that the Department has such a tracking system.
By <b>November 30, 2012</b> , and on an ongoing basis, provide Monitors' subject matter experts with training curricula and schedules at least 15 days in advance of training, but preferably 30 days in advance.	<b>Not satisfied.</b> As the OIM has previously requested, and as is required by the Joint Action Plan, the VIPD must provide the OIM with training schedules, lesson plans, and curricula, without prompting, from the OIM.
By <b>November 30, 2012</b> , and on an ongoing basis, VIPD shall consult with VIAG to ensure that all use of force training and use of force policies are in compliance with applicable laws and VIPD policy.	<b>Not satisfied.</b> The VIPD reported during the First and Second Quarters of 2013 that the Training and Use of Force working groups are developing a protocol for cooperation between the VIPD's Training Director and the VIAG. The VIPD continued working on such a protocol during the Third Quarter of 2013.
By <b>January 31, 2013</b> , provide competency-based training of officers and supervisors on remaining policies.	<b>Not satisfied.</b> The VIPD provided in-service training during the Second Quarter of 2013. The VIPD has not provided the OIM with a report about the number of Officers and

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	Supervisors that have been trained on the Department's policies.
By <b>January 31, 2013</b> , provide ongoing refresher training on policies through documented, periodic in-service and Roll Call training. Incorporate competency-based training on policies into Police Academy.	<b>Not satisfied.</b> Although the VIPD has provided the OIM with attendance sheets and brief descriptions of Roll Call and Commanders Call training, the OIM needs more detailed information about the subject matter being covered.
By <b>January 31, 2013</b> , provide competency-based training of supervisors on remaining policies (i.e. Investigating Misconduct and Citizen Complaints Policy).	<b>Not satisfied.</b> The VIPD provided in-service training during the Second Quarter of 2013. The VIPD has not provided the OIM with a report about the number of Supervisors that have been trained on the Department's policy.
By <b>April 30, 2013</b> , auditors will attend outside training regarding conducting audits.	<b>Not satisfied.</b> The VIPD expects to provide audit training in the Fourth Quarter of 2013.
By <b>June 30, 2013</b> , VIPD will implement systems to ensure that lapses in policy implementation are addressed by system of documented discipline and/or re-training.	<b>Not satisfied.</b> The VIPD continued to work on its audit tools during the Second and Third Quarters of 2013. The VIPD received DOJ approval for its audit tools during the Fourth Quarter of 2013.
By <b>June 30, 2013</b> , in consultation with DOJ, implement audit tools to ensure staff are complying with the policies. Also ensure that lapses in policy implementation are addressed by system of documented discipline and/or re-training.	<b>Not satisfied.</b> The VIPD continued to work on its audit tools during the Second and Third Quarters of 2013. The VIPD received DOJ approval for its audit tools during the Fourth Quarter of 2013.
By <b>June 30, 2013</b> , Train staff regarding Audit Protocol.	<b>Not satisfied.</b> The VIPD expects to provide audit training in the Fourth Quarter of 2013.

**73. The VIPD will continue to coordinate and review all use of force policy and training to ensure quality, consistency, and compliance with applicable law and VIPD policy. The VIPD will conduct regular subsequent reviews, at least semi-annually.**

**Compliance Assessment:**

Phase 1 is inapplicable to this Consent Decree requirement. The Department has not achieved Phase 2 or Phase 3 compliance as discussed below. Therefore, the Department is not yet in substantial compliance with ¶ 73 of the Consent Decree.

**VIPD Report:**

During the Third Quarter of 2013, the Committee reviewed the Critical Policy Review Standard Operating Procedure (“SOP”), which provides guidelines for reviewing Department policies, and forwarded it to the Commissioner for review and approval.

The VIPD reports that the Committee continued efforts to coordinate an annual review process for all policies, including use of force policies. The Department issued a memorandum to VIPD personnel soliciting comments about the policies to be reviewed. The Policy Committee has yet to set any dates to review the policies. The VIPD reports that it will document the review process and that the VIAG will be involved.

**OIM Report:**

The VIPD first reported during the Third Quarter of 2012 that it would periodically review its use of force policies in consultation with the VIAG. The Use of Force working group reported during the First Quarter of 2013 that it planned to review one use of force policy every two weeks. The VIPD stopped that process because it determined that the SOP was needed. The Committee approved the SOP during the Third Quarter of 2013, and it was signed by the Commissioner during the Fourth Quarter of 2013. Although the OIM has observed greater ad hoc involvement by the VIAG in the development of lesson plans and policy review, the VIPD has not demonstrated that there is a process for VIAG review that is systematic and documented.

**Recommendations:**

The VIPD must provide documentation to the OIM demonstrating that the VIPD has coordinated and reviewed all use of force policies at least annually, and that the Training Division has reviewed all training at least semi-annually. The OIM has only received an explanation on how the semi-annual review of training would take place and who would participate.

**74. The Director of Training, either directly or through his/her designee(s), consistent with applicable law and VIPD policy will: a) ensure the quality of all use of force training; b) develop and implement use of force training curricula; c) select and train VIPD officer trainers; d) develop, implement, approve, and oversee all in-service training; e) in conjunction with the Chiefs, develop, implement, approve, and oversee a patrol division roll call protocol designed to effectively inform officers of relevant changes in policies and procedures; f) establish procedures for evaluating all training curricula and procedures; and g) conduct regular needs assessments to ensure that use of force training is responsive to the knowledge, skills, and abilities of the officers being trained.**

**Compliance Assessment:**

Phase 1 is inapplicable to this Consent Decree requirement. The Department has not achieved Phase 2 or Phase 3 compliance as discussed below. Therefore, the Department is not in substantial compliance with ¶ 74 of the Consent Decree.

**VIPD Report:**

The VIPD reports that during the Third Quarter of 2013, the Training Division submitted lesson plans to the VIAG in preparation for in-service training scheduled for the Fourth Quarter of 2013. As part of in-service training, the VIPD reports that only certified use of force instructors conduct use of force training. The VIPD sent two Officers from each District to training at the Federal Law Enforcement Training Center in Glenco, Georgia. As reported last quarter, the Training Division is developing criteria upon which to base its instructor selection process. Once finalized, the VIPD will provide the criteria to the Compliance Coordinator and the OIM.

During the Third Quarter of 2013, the Department held Integrated Use of Force and Law Enforcement Firearms instructor training. The VIPD's Compliance Coordinator will provide the OIM with the relevant training records once they are received from the Training Division, including lesson plans and post-training proficiency examinations.

The Training Division continues to provide course evaluation forms at the conclusion of training. The completed forms are then reviewed by the Training Director and/or his staff for suggestions on improving the quality of training.

**OIM Report:**

Progress in achieving substantial compliance with ¶ 74 continues to be slow.

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74 a) The VIPD previously reported that the Director of Training reviews evaluations completed by Supervisors and Officers at the conclusion of training. Ensuring the quality of use of force training, however, requires more than just reviewing student evaluations. The Director of Training must elicit feedback from instructors and the Training working group, aggregate and file all reviews and comments received, and implement any improvements prior to in-service and other training. The VIPD must document that it includes the VIAG in its systematic evaluation of use of force training. While the OIM is aware that the VIPD completes evaluation forms following each training, the VIPD has not demonstrated that it analyzes the comments received or reports any significant conclusions (e.g., need to revise course material) from those evaluations.

74 b) The VIPD reports that the Department developed use of force training curricula in March of 2011. That curricula must be reviewed for possible revisions in light of intervening legal developments or the Department's identification of particular deficiencies. The VIPD has not reported that it has undertaken this type of review. Under the Consent Decree, the Department must conduct the review at least semi-annually.

74 c) The VIPD did not assess this requirement during the Third Quarter of 2013.

74 d) The VIPD has satisfied this requirement.

74 e) The Training Division has updated its records to reflect recent Roll Call training in both Districts. The OIM commends the Training Division for reinforcing Consent Decree related training, but systematic implementation of Roll Call training is required to achieve substantial compliance. The VIPD has previously reported that it has not fully implemented the Roll Call Policy because of a shortage of Supervisors in both Districts. This provision also requires the Training Director to coordinate with the Chiefs in both Districts in conducting and developing Roll Call and Commanders Call training. The VIPD has not demonstrated to the OIM that the Training Director is coordinating with the Chiefs in developing Roll Call Training. The Department's training function would benefit from close coordination between the Department's management on this and other training requirements. The OIM, however, has observed little coordination or communication in this area. Since the VIPD has not provided the OIM with any documentation that the Training Director jointly develops Roll Call training with other divisions in the Department, the Training Division should develop a training committee with the IAB to identify recurring issues to address during in-service and Roll Call and Commanders Call training.

74 f) The VIPD reported to the OIM that it has created a "Training Division Course Evaluation" form to evaluate all training. The Department,



however, has not provided the Police Practices Experts with completed forms or any report summarizing the Department's analysis of these evaluations.

74 g) During the First and Second Quarters of 2013, the VIPD reported that it continues to maintain training folders for Officers, which include questionnaires that Officers complete after attending training to assess their understanding of the material presented. The VIPD, however, has not developed a process for reviewing and analyzing this information. A proper review process must analyze this information, in concert with other training data, so that the VIPD (and the OIM) can determine where improvements in training are required. In addition, the VIPD has limited any review of these evaluations to staff in the Training Division. The Department would benefit from including Supervisors and other managers and trainers in this review process.

#### **Recommendations:**

The VIPD needs to substantially improve the way in which it provides and evaluates the quality of the Department's training. For example, the Department does not appear to have a system in place for selecting suitable candidates to serve as instructors. For the past three years, the OIM has requested a policy or procedure detailing how the Department selects instructor candidates, but the Department has not provided a substantive response. The OIM previously worked with the VIPD to develop a process for selecting suitable Field Training Officer candidates. We previously recommended that the Department adopt that process to identify instructor candidates more broadly, but the Department ignored that recommendation.

The VIPD has reported (verbally) that members of the Training Division periodically observe training programs, but it needs to better document that process. In addition to documenting the fact that an instructor was observed, the observer should also document any comments or suggestions relating to the training and then provide that feedback to the instructor. We have not seen any documentation indicating that the Department follows this procedure.

**75. The VIPD will continue to provide training consistent with VIPD policy, law, and proper police practices, and will ensure that only mandated objectives and approved lesson plans are taught by instructors. The VIPD will make best efforts to train each work shift as a team in their use of force training.**

#### **Compliance Assessment:**

Phase 1 is inapplicable to this Consent Decree requirement. The Department has achieved Phase 2 compliance because it has provided training on Department policies, but it has not achieved Phase 3 compliance as

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discussed below. Therefore, the Department is not in substantial compliance with ¶ 75 of the Consent Decree.

**VIPD Report:**

The VIPD reports that it has provided the OIM with the lesson plans for the following policies: Arrest; Firearms; O.C. Spray; Reporting, Investigation and Review of Use of Force; Vehicle Pursuit; Sniper; Hostage Negotiation; Spike Strip; Canine; and Electronic Control Weapon. The Department also provided the OIM with copies of post-training examinations from in-service training on the following policies: Investigating Officer Misconduct and Citizen Complaints; Electronic Control Weapon; Arrest; O.C. Spray; Impact Weapon; Canine; Use of Force; Firearms; Spike Strip; Sniper; Hostage Negotiation; and Vehicle Pursuit.

The VIPD reports that lesson plans continue to be reviewed by the VIPD's Training Director and the VIAG prior to training to ensure compliance with the requirements of ¶ 75.

**OIM Report:**

The OIM commends the VIPD for providing copies of lesson plans for in-service training conducted during the Third Quarter of 2013. The OIM, however, notes that the Department has not provided lesson plans for training on the Use of Force, Off-Duty Official Action, or Field Training Officer Program policies. Additionally, the Department has not provided documentation that all lesson plans have been reviewed by the VIAG. Indeed, the OIM has received some lesson plans indicating that the VIAG has reviewed the materials, but there is no such indication on others. The Department must develop a process for consistent and systematic review of Department lesson plans and curricula by the VIAG.

The Police Practices Experts have observed that the quality of training has improved, especially when the VIAG has reviewed the lesson plans and post-training examinations. The OIM was also pleased that participants in vehicle-related training took additional steps to discuss specific places within the Virgin Islands where certain tactics would not be practical and should be prohibited. In addition, training has increasingly incorporated adult learning techniques (e.g., practical exercises and illustrations), which are more effective for comprehension and participation.

As explained earlier in the Report, the OIM will assess the Department's obligation to provide training for the policies and protocols required by ¶¶ 31, 39, 40, 47, 50, 52, 53, 62, 64 and 70 in connection with the specific requirements contained throughout the Consent Decree and ¶ 75. In the next quarterly report, the OIM hopes to provide a more detailed analysis of the steps that the VIPD has taken towards complying with ¶ 75 based on its responses to the Data Sources Chart.

**Recommendations:**

The OIM continues to recommend that the Training Division work in concert with the Chiefs and Deputy Chiefs to arrange further training (in-service, Roll Call, and Commanders Call) on certain policies where compliance has been problematic, including the Use of Force Policy, Acceptance of Citizen Complaint Policy, and Investigating Misconduct and Citizen Complaints Policy. To ensure the post-training examinations serve their intended purpose, the OIM has recommended repeatedly that the VIPD develop multiple versions of the post-training examinations so that VIPD personnel cannot memorize the questions and answers. Although having multiple versions of an exam is a standard police practice, the VIPD has not adopted this recommendation. The Training Division also should work closely with the Use of Force, Complaint Process, and Management and Supervision working groups to identify areas that require additional training, either through additional in-service training or Roll Call and Commanders Call training, to ensure that VIPD personnel adequately understand their obligations. Lesson plans for all training programs should be vetted and approved by Department management and the VIAG in advance of training, and should be provided to the OIM with documentation sufficient to show that the lesson plans were reviewed by the VIAG.

**76. The VIPD shall continue to keep adequate records of lesson plans and other training materials, such that the most current training documents are maintained in a central, commonly accessible file, and are clearly dated.**

**Compliance Assessment:**

Phase 1 is inapplicable to this Consent Decree requirement. The Department has achieved Phase 2 compliance because the VIPD currently maintains training records, but it has not achieved Phase 3 compliance as discussed below. Therefore, the Department is not in substantial compliance with ¶ 76 of the Consent Decree.

**VIPD Report:**

During the Third Quarter of 2013, the Training Division continued its process to procure more sophisticated software to maintain all training records. This software will track and manage all training records for sworn and civilian personnel. The software will also enable the VIPD to conduct on-line training.

In addition, the VIPD continued its process to procure 22 flat screen televisions for the Zones in both Districts to provide, among other things, training information for VIPD personnel.

**OIM Report:**

The VIPD has indicated for almost a year its intent to acquire software capable of producing the kind of information required by the Consent Decree in a format that would substantiate compliance. This area of compliance languishes behind other areas of the Consent Decree. The OIM expects that, even after new software is purchased, additional effort and resources will need to be devoted to installation and data transfer.

Under the Joint Action Plan, the VIPD is required to provide “training curricula and schedules at least 15 days in advance of training, but preferably 30 days in advance.” The Training Division, however, often provides notice of any upcoming Consent Decree training with only 15 days notice. This practice makes it difficult for the OIM to make proper arrangements to monitor training. The Department should provide the OIM with as much notice about upcoming training as possible. Once the Department has scheduled training, there is no reason to wait to notify the OIM.

Similarly, the VIPD does not provide training curricula within the required timeframe. During the Third Quarter of 2013, the OIM attended audit training, but did not receive the training curricula as required until arriving in the Territory and specifically requesting such material. It is in the VIPD’s best interest to provide as much notice as possible so that the OIM can have every opportunity to evaluate the VIPD’s progress towards substantial compliance with ¶ 76.

**Recommendations:**

The VIPD should finalize plans to purchase a new database to maintain training records. A manual record keeping system does not allow the Training Division to generate reports sufficient to assess the VIPD’s compliance with the Consent Decree’s training requirements. This capability is fundamental to modern policing.

Until the Department establishes a new computerized system to maintain training records, the OIM urges the VIPD to document (i) sworn personnel who satisfactorily complete training; (ii) sworn personnel who fail to attend training; and (iii) dispositions against sworn personnel who fail to attend training. With the exception of a report reflecting this information for Blue Team training in the St. Thomas/St. John District, the VIPD has not provided the OIM with this information for other Consent Decree related training.

**77. The VIPD shall continue to maintain training records regarding every VIPD officer that reliably indicate the training each officer has received. The training records shall, at a minimum, include the course description and duration, curriculum, and instructor for each officer.**

**Compliance Assessment:**

Phase 1 is inapplicable to this Consent Decree requirement. The Department has achieved Phase 2 compliance since the VIPD reports that it maintains training records, but it has not achieved Phase 3 compliance as discussed below. Therefore, the Department is not in substantial compliance with ¶ 77 of the Consent Decree.

**VIPD Report:**

The VIPD reports that it continues to maintain a training database in each District, which stores lesson plans, attendance rosters, instructor certifications, and training completed by each Officer. The Training Division is also in the process of procuring more sophisticated software to maintain all training records. This software will track and manage all training records for sworn and civilian personnel. The software will also enable the VIPD to conduct on-line training.

**OIM Report:**

The VIPD's current system for maintaining training records does not capture the course description, length of training, curricula, or instructor information. While the VIPD may be able to cobble together that information from different sources, it is not readily accessible. Moreover, the VIPD does not maintain computerized records for instructor trainings.

**Recommendations:**

As discussed above, the VIPD should finalize plans to purchase a new database to maintain training records. Until a new database is purchased and functioning, the VIPD should manually compile reports confirming compliance with the requirements of ¶ 77.

**78. The Training Director will review all use of force training and use of force policies on a regular basis to ensure compliance with applicable laws and Virgin Islands Police Department policy. The Training Director will consult with the Attorney General's Office on any additions, changes and/or modifications regarding use of force training or policies to ensure compliance with applicable laws.**

**Compliance Assessment:**

Phase 1 is inapplicable to this Consent Decree requirement. The Department has achieved Phase 2 compliance since the VIPD reports that the Training Director reviews all training, but it has not achieved Phase 3 compliance as discussed below. Therefore, the Department is not in substantial compliance with ¶ 78 of the Consent Decree.

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**VIPD Report:**

The VIPD reports that the Training Division continues to consult with the VIAG to review force related policies and lesson plans. The VIPD contends that the SOP approved by the Committee and under review by the Commissioner will formalize this review process.

**OIM Report:**

The Use of Force working group reported during the First Quarter of 2013 that it planned to review one use of force policy every two weeks. The VIPD stopped that process because it determined that the SOP was needed. The Committee approved the SOP during the Third Quarter of 2013, and it was signed by the Commissioner during the Fourth Quarter of 2013. Although the OIM has observed greater ad hoc involvement by the VIAG in the development of lesson plans and policy review, the VIPD has not demonstrated that there is a process for VIAG review that is systematic and documented

**Recommendations:**

Maintaining a viable Training working group is critical and long overdue. The Training Director must work with Department management in order for the Department's training capacity to grow. Up to this point, the Training working group has functioned independently but should work cooperatively with other working groups when appropriate to achieve substantial compliance with the Consent Decree.

**79. The VIPD will continue to provide all recruits, officers, supervisors, and managers with annual training on use of force. Such training will include and address the following topics: a) the VIPD's use of force model, as described in this Agreement; b) proper use of force decision making; c) the VIPD's use of force reporting requirements; d) the Fourth Amendment and other constitutional requirements; e) examples of scenarios faced by VIPD officers that illustrate proper use of force decision-making; f) interactive exercises that emphasize proper use of force decision-making; g) de-escalation techniques that encourage officers to make arrests without using force, and instruction that disengagement, area containment, surveillance, waiting out a subject, summoning reinforcements, calling in specialized units, or delaying arrest maybe the appropriate response to a situation even when the use of force would be legally justified; h) threat assessment; i) appropriate training on conflict management.**

**Compliance Assessment:**

Phase 1 is inapplicable to this Consent Decree requirement. The Department has not achieved Phase 2 or Phase 3 compliance as discussed

below. Therefore, the Department is not in substantial compliance with ¶ 79 of the Consent Decree.

**VIPD Report:**

The VIPD reports that annual in-service training is scheduled to begin during the Fourth Quarter of 2013. The Department intends to train on the following Consent Decree related topics: TASER, O.C. Spray; Disciplinary Matrix; Defensive Tactics; Investigating Misconduct and Citizen Complaints; preponderance of the evidence; constitutional law; dealing with the mentally ill; and integrated use of force and scenario based training.

**OIM Report:**

a) The VIPD has developed a use of force model as required under the Consent Decree. However, the VIPD has not provided the OIM with any lesson plans demonstrating how the use of force model will be reinforced during in-service training.

b) The VIPD has not provided the OIM with any lesson plans relating to training on proper use of force decision making. In addition, the OIM has not received any lesson plans addressing how the training lab will be used during in-service training.

c) The VIPD has improved its use of force reporting since the inception of the Consent Decree. However, the VIPD conducted its own audit and discovered issues with uniform force reporting and accountability.

d) Topics including the Fourth Amendment and other constitutional requirements have been addressed in previous training provided by the Department. The OIM will monitor in-service training during the Fourth Quarter of 2013.

e) The Police Practices Experts have observed that the VIPD has started to incorporate scenario-based training. This is a positive development since much of the training previously observed by the Police Practices Experts was a recitation of the policy.

f) The Department has not utilized the training lab with great frequency. The OIM expected to see a plan integrating simulators into recruit and in-service training. The VIPD has reported to the OIM that the training lab was used in November of 2012 and that the Special Response Team on the St. Thomas/St. John District received introductory training. The Department, however, has not provided the OIM with documentation of that training. The OIM will monitor in-service training during the Fourth Quarter of 2013 since the Department intends to use scenario based training.

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g) As of the Second Quarter of 2013, the OIM was not aware of any specific training on de-escalation techniques, including encouraging officers to make arrests without using force, or instructing on disengagement, area containment, surveillance, waiting out a subject, summoning reinforcements, calling in specialized units, or delaying arrest.

h) The VIPD has not provided the OIM with a training schedule or lesson plans for threat assessment training.

i) The VIPD has not provided the OIM with a training schedule or lesson plans that focus on conflict management.

**Recommendations:**

We previously recommended that the Training Division work closely with the Chiefs and Deputy Chiefs to arrange further training (in-service, Roll Call, and Commanders Call) on certain policies for which compliance has been problematic based on the results of post-training examinations, Department audits, and OIM audits. The Training Division also should work closely with the Use of Force, Citizen Complaint Process, and Management and Supervision working groups to identify areas that require additional training, either through additional in-service training or Roll Call and Commanders Call training, to ensure that VIPD personnel adequately understand their obligations. VIPD management needs to use information attained from the EIP to identify training needs. The VIPD has not provided the OIM with any indication that the Training Division has formalized or documented its relationship with the Chiefs on both Districts to coordinate Roll Call training. To the extent the VIPD has undertaken such a process, it should explain what training has been held as a result of this joint effort.

**80. The VIPD will continue to provide training to all its officers on the VIPD citizen complaint process. The VIPD will develop a protocol for all its officers on appropriate conduct and responses in handling citizens' complaints and will train officers in the protocol.**

**Compliance Assessment:**

The Department has achieved Phase 1 and 2 compliance because it has issued policies consistent with the citizen complaint process requirements of the Consent Decree and has provided related training, but it has not achieved Phase 3 compliance as discussed below. Therefore, the Department is not yet in substantial compliance with ¶ 80 of the Consent Decree.

**VIPD Report:**

The VIPD held in-service training during the Second and Third Quarters of 2013, which included training on the Acceptance of Citizen Complaints



Policy. Further in-service training will be conducted during the Fourth Quarter of 2013.

**OIM Report:**

The Department has increased the number of Roll Call and Commanders Call trainings dedicated to the citizen complaint process. Records for Roll Call and Commanders Call training, like all Department training, should document which Officers attended training, which Officers did not attend, and what efforts the Department has undertaken to train any “no shows.” The Training Division, in coordination with the Chiefs from both Districts, must ensure that Roll Call and Commanders Call training is implemented and documented systematically. Despite repeated requests for information on “no shows” and Officers who receive remedial training, the VIPD has not provided the OIM with comprehensive files on these trainings. The OIM will report on in-service training during the Fourth Quarter of 2013.

**Recommendations:**

The VIPD has made significant progress issuing the Acceptance of Citizen Complaints Policy and the Investigating Misconduct and Citizens Policy. The VIPD should continue to provide Officers and Supervisors with additional training on the complaint process and then conduct and document periodic audits to ensure that VIPD personnel are complying with the relevant policies. The VIPD should develop a process for identifying personnel who continually fail to demonstrate knowledge of the policy, and provide remedial training or discipline as appropriate. The Training Division also should document training and testing in connection with Roll Call and Commanders Call training.

**81. The VIPD will provide training on appropriate burdens of proof to all supervisors, as well as the factors to consider when evaluating complainant or witness credibility (to ensure that their recommendations regarding dispositions are unbiased, uniform, and legally appropriate). The VIPD will also continue to provide training to supervisors on leadership and command accountability, including techniques designed to promote proper police practices. This training will be provided to all officers promoted to supervisory rank within 90 days of assuming supervisory responsibilities, and will be made part of annual in-service training.**

**Compliance Assessment:**

The Department has achieved Phase 1 and 2 compliance because it has issued policies consistent the requirements of ¶ 81 and has provided related training, but it has not achieved Phase 3 compliance as discussed below. Therefore, the Department is not yet in substantial compliance with ¶ 81 of the Consent Decree.

**VIPD Report:**

The VIPD reports that it continues to provide training on the Acceptance of Citizen Complaints Policy and the Investigating Misconduct and Citizen Complaints Policy through in-service, Roll Call and Commanders Call training. According to the VIPD, this training includes post-training examinations prepared by the VIAG on the preponderance of evidence standard, which is used to evaluate citizen complaint investigations.

The VIPD reports that it previously provided training to Supervisors within 90 days of being promoted, but that such training was last held in 2012.

**OIM Report:**

Although the VIPD is conducting training, administering post-training examinations, and recording attendance at training, the VIPD does not routinely provide the OIM with all lesson plans, curricula, instructor information and other training materials for training held during the quarter. At this point in the Consent Decree, there is no reason for any delay in sharing records or providing insufficient training records. In addition, the Department needs to train Captains and higher ranking VIPD personnel about command accountability. The VIPD has not provided the OIM with evidence that this training has ever occurred.

**Recommendations:**

Maintaining a viable Training working group will help the Training Division achieve compliance with the requirements of ¶ 81. The Training Division should work with the Chiefs and Deputy Chiefs to conduct Commanders Call training on the preponderance of the evidence standard, document such training and attendance by Supervisors, and record the results of any examinations administered following training. Additionally, the VIPD should develop a process for identifying personnel who continually fail to comply with Department policy. Once those individuals are identified, the working group should work with the Chiefs, Deputy Chiefs, the IAB, and the Training Division to provide remedial training or other corrective action. All audits should be documented and shared with the Compliance Coordinator and the OIM.

**100. The Territory of the Virgin Islands and the VIPD shall implement each and every provision of this Agreement as that term defined in Paragraph 30 of this Agreement.**

**101. The VIPD shall implement immediately all provisions of this Agreement that involve the continuation of current VIPD policies, procedures, and practices. The remaining provisions shall be implemented either by the specified implementation date or, for those**

**provisions that have no specified implementation date, as soon as is reasonably practicable and no later than 150 days after this Agreement's effective date.**

**OIM Report:**

As explained earlier in the Report, the OIM will assess whether the Department is consistently applying the policies and protocols required by ¶¶ 31, 39, 40, 47, 50, 52, 53, 62, 64 and 70 in connection with ¶¶ 100 and 101. The VIPD has not achieved substantial compliance with the implementation requirement of ¶¶ 100 and 101 because, among other things, the Department has not provided documentation demonstrating that VIPD personnel are proficient with the Department's policies. In addition, the Department's Audit Unit is not fully functioning to assess the VIPD's compliance with Department policies as required under the Consent Decree. In the next quarterly report, the OIM hopes to provide a more detailed analysis of the steps that the VIPD has taken towards implementing each applicable provision of the Consent Decree based on its responses to the Data Sources Chart.

## Conclusion

While the VIPD continues to make progress in certain areas, work remains, particularly with respect to the Department's use, reporting, and investigation of force. The Department should conduct further training to emphasize the requirements of its revised use of force policies, which lie at the heart of the Consent Decree. In addition, in order to achieve substantial compliance (and demonstrate substantial compliance to the OIM), the Department must (among other things) put in place a rigorous audit process to determine whether VIPD personnel are complying with the Department's policies, and to memorialize the VIPD's progress towards substantial compliance. This will require the Audit Unit to be fully functional and to work with the Training Division, the IAB, and the working groups. As we have previously reported, a robust auditing function is essential to the Department's ability to ensure that policies are implemented, that personnel understand and comply with Department policies, and that remedial training or other required action is taken to ensure that VIPD personnel are equipped to carry out Department policies and procedures in their daily policing activities. While audits conducted by the working groups can supplement the Audit Unit's work, they will generally be more narrowly tailored than audits conducted by the Audit Unit and not a substitute for the Audit Unit's work.

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**Appendix A  
Case Tracking List**

<u>Case Number</u>	<u>District</u>	<u>Summary of Allegations</u>
AIX2010-0091	St. Croix	Use of force involving a firearm during a vehicle pursuit.
FAX2010-0014	St. Croix	Use of force in responding to a burglary. Suspect died.
UOFX2011-0050	St. Croix	Incomplete case.
CCX2012-0073	St. Croix	Citizen complaint about Officer's alleged use of force.
UOFX2012-0005	St. Croix	Use of force involving a firearm while Officer executed a warrant. Suspect died.
UOFX2012-0066	St. Croix	Use of force involving a firearm in responding to a burglary. Suspect was wounded.
UOFX2012-0065	St. Croix	Use of force involving a firearm in responding to a burglary.
AIX2013-0001	St. Croix	Incomplete case.
CCX2013-0003	St. Croix	Incomplete case.
CCX2013-0007	St. Croix	Citizen complaint about Officer's threatened use of force.
CCX2013-0016	St. Croix	Citizen complaint about Officer's use of force during an arrest.
UOFX2013-0004	St. Croix	Use of force in responding to a burglary. Suspect was bitten by police dog.
UOFX2013-0005	St. Croix	Use of force involving a TASER in arresting an armed suspect.
UOFX2013-0007	St. Croix	Incomplete case.
UOFX2013-0008	St. Croix	Use of force in making an arrest.
UOFX2013-0018	St. Croix	Use of force during a vehicle pursuit.

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<u>Case Number</u>	<u>District</u>	<u>Summary of Allegations</u>
UOFX2013-0024	St. Croix	Incomplete case.
AIT2010-0019	St. Thomas	Officers arrested on 33 counts of federal indictment.
AIT2011-0031	St. Thomas	Officer allegedly committed assault.
AIT2011-0034	St. Thomas	Officer allegedly made a false statement.
AIT2011-0047	St. Thomas	Sergeant allegedly made fraudulent claims to the government.
AIT2011-0050	St. Thomas	Use of force involving a firearm.
AIT2011-0054	St. Thomas	Use of force involving a firearm in responding to a robbery. Suspect was killed.
AIT2011-0065	St. Thomas	Officers arrested for allegedly committing crimes.
AIT2011-0071	St. Thomas	Officer allegedly failed to fill out RRR.
AIT2011-0074	St. Thomas	Officer allegedly served alcohol in the presence of minors.
AIT2011-0122	St. Thomas	Alleged discrepancy about overtime.
AIT2012-0015	St. Thomas	Officers allegedly assaulted and false imprisoned each other.
AIT2012-0029	St. Thomas	Officer testified as a character witness for the defense without first notifying the VIPD.
AIT2012-0061	St. Thomas	Use of force on a disturbed individual.
AIT2013-0012	St. Thomas	Verbal and sexual harassment between Officer and Supervisor.
AIT2013-0014	St. Thomas	Alleged failure to file Form 1A on a timely basis and to notify VIPD personnel of crime.
CCT2009-0003	St. Thomas	Alleged criminal conduct by Officer.
CCT2010-0015	St. Thomas	Citizen complaint about Officer's alleged use of force.



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<u>Case Number</u>	<u>District</u>	<u>Summary of Allegations</u>
CCT2011-0206	St. Thomas	Alleged criminal conduct by Officer.
CCT2012-0090	St. Thomas	Citizen complaint about alleged use of force.
CCT2013-0009	St. Thomas	Citizen complaint about alleged interrogation.
CCT2013-0010	St. Thomas	Citizen complaint about Officer's alleged inaction.
CCT2013-0011	St. Thomas	Citizen complaint about alleged interrogation.
CCT2013-0020	St. Thomas	Citizen complaint about alleged detention.
CCT2013-0023	St. Thomas	Citizen complaint about Officer's alleged inaction.
CCT2013-0024	St. Thomas	Citizen complaint about alleged harassment and threats by Officer.
CCT2013-0042	St. Thomas	Citizen complaint about alleged brandishing of a firearm by an Officer.
CT-0001-09	St. Thomas	Use of force involving a firearm.
CT-0012-09	St. Thomas	Officer arrested for alleged crimes.
CT-0024-11	St. Thomas	Officer investigated for alleged crimes.
CCT2013-0035	St. Thomas	Citizen complaint about alleged warrantless search of home.
CCT2013-0044	St. Thomas	Citizen complaint about alleged Officer misconduct
FAT2009-0001	St. Thomas	Use of force involving a firearm.
FAT2010-0001	St. Thomas	Use of force involving a firearm.
FAT2011-0014	St. Thomas	Use of force involving a firearm.
FAT2011-0016	St. Thomas	Use of force involving a firearm.
FAT2011-0018	St. Thomas	Use of force involving a firearm.

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<u>Case Number</u>	<u>District</u>	<u>Summary of Allegations</u>
FAT2011-0019	St. Thomas	Use of force involving a firearm. Suspect was wounded.
FAT2011-0020	St. Thomas	Use of force in responding to a robbery. Suspect was wounded.
FAT2011-0021	St. Thomas	Use of force involving a firearm.
FAT2012-0002	St. Thomas	Use of force involving a firearm.
FAT2013-0001	St. Thomas	Use of force involving a firearm.
UOFT2011-0084	St. Thomas	Citizen complaint about alleged use of force.
UOFT2011-0140	St. Thomas	Use of force involving firearms while executing an arrest warrant. Suspect died.
UOFT2012-0031	St. Thomas	Use of force involving firearms. Suspect and one Officer died.

## **Appendix B**

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

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

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

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

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

#### **1. Requirements**

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

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

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

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

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

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

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- 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.<sup>4</sup> These reviews must account for all shots fired and the locations of all officers who discharged their weapons. In connection with the investigation of all critical firearm discharges, 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;

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

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

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

- Provides that, absent exigent circumstances, off-duty officers must notify 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

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

- Each VIPD station, substation, and mobile substation must permanently post a placard that describes the complaint process and includes relevant contact information, including telephone numbers. These placards must be displayed in English, Spanish, and, where necessary in light of the local community, in French or French Patois.
- VIPD officers are required to carry English, Spanish, French, and French Patois<sup>5</sup> versions of complaint forms and informational brochures in their vehicles at all times while on duty.
- If a citizen objects to an officer's conduct, the officer is required to inform the citizen of his or her right to make a complaint.
- Officers are prohibited from discouraging any person from making a complaint concerning an officer's conduct.

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

- 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

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



opinions regarding the complainant's mental competency or veracity.

- Upon receipt, 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.”<sup>6</sup>
- Provide guidance to all investigators regarding procedures for handling allegations of potential criminal misconduct, including the referral of such allegations to the Virgin Islands Attorney General’s Office or other appropriate agency for possible criminal prosecution. The policy must establish the entity or individual responsible for making the determination as to whether a matter should be investigated criminally. The policy also must require the completion of 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

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

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

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

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

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

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

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

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

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

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

- All uses of force;

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

The VIPD has the option either to purchase the RMS "off the shelf" and customize the system to VIPD's requirements or to develop and implement the RMS pursuant to a contracting schedule set forth in the Consent Decree.<sup>8</sup>

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

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

<sup>8</sup> See CD ¶ 66.

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,
  - 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;

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- 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.

**IV. 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.