

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

UNITED STATES OF AMERICA,)	
)	C.A. No. 3:08-CV-158
Plaintiff,)	
)	
v.)	
)	
1. THE TERRITORY OF THE VIRGIN)	
ISLANDS; and)	
)	
2. THE VIRGIN ISLANDS POLICE)	
DEPARTMENT,)	
)	
Defendants.)	

**REPORT REGARDING DEFENDANTS’ EFFORTS TO COMPLY WITH
QUARTERLY GOALS BY FEBRUARY 5, 2016**

Pursuant to the Court’s August 21, 2015 Order, Dkt. # 165, the United States Department of Justice (“DOJ”) files this report to assess the efforts of the Territory of the Virgin Islands and the Virgin Islands Police Department (“VIPD”) to meet the quarterly goals due February 5, 2016, and to update the Court regarding the status of the Consent Decree. Of nine goals the VIPD was obligated to meet this quarter, the VIPD met only five—and of those five, the DOJ has reservations about three. In addition, regarding VIPD’s overall compliance with the 51 paragraphs of the Consent Decree, its status has now remarkably remained unchanged for a full year and a half—31 paragraphs are in substantial compliance, and 20 paragraphs remain out of compliance. This quarter, aside from meeting just more than half of its quarterly goals, VIPD merely managed to bring a single sub-paragraph into compliance.

Quarterly Goals

For the quarter ending February 5, 2016, per the VIPD’s notice filed November 22,

2015, Dkt. # 187, VIPD was obligated to meet the following goals:¹

1. Develop Standard Operating Procedures for the Force Review Board.
2. Develop Standard Operating Procedures for the Force Investigation Team (“FIT”).
3. Chiefs of Police will hold at least two Use of Force Review Boards for the quarter. FIT members to observe or participate.
4. Establish process for on-call supervisors to respond to Use of Force incidents when off duty.
5. Bring backlog of cases current by designating a time period for supervisors responsible for the delinquent cases to complete the investigation of each delinquent case.
6. The Virgin Islands Attorney General’s Office will provide the VIPD with a log of all criminal proceedings initiated by, as well as civil lawsuits and administrative claims served upon, the Attorney General in 2015 resulting from VIPD operations or the actions of VIPD personnel.
7. VIPD will conduct an IAPro summit on December 21, 2015, in an effort to better track the status of cases and bring about increased managerial accountability.
8. Determine where more effective adult learning can be applied and be more effective. . . .²
 - a. Identify training for adult learning concepts;
 - b. Identify training dates and location; and
 - c. Obtain course outline and training materials for review and approval.

¹ Though not referenced in this list, several of these goals included sub-goals with deadlines sequentially scheduled throughout the quarter in order to help VIPD steadily move toward compliance.

² The specific requirements for Goals 8 and 9 for the quarter ending February 5, 2016, are enumerated as the bulleted items beginning with the designation “a.” For brevity, DOJ has omitted portions of the preambles associated with goals 8 and 9. The entire text may be found in VIPD’s notice filed November 22, 2015, Dkt. #187.

9. Training Division will collaborate with the other three working groups to identify and respond with training support to Consent Decree issues and areas identified by the working groups. . . .
 - a. Design the training support process; and
 - b. Meet with each of the working group and explain protocol.

As already noted, VIPD met five of these nine goals, albeit with some reservations.

VIPD met (with reservations) the first and second goals, which required VIPD to develop Standard Operating Procedures (“SOPs”) for the Force Review Board and Force Investigation Team, respectively. Though these SOPs have not been finalized, DOJ considers VIPD to have met both goals because it has submitted multiple drafts to the Monitoring Team and DOJ.

VIPD submitted its first draft on December 21, 2015. DOJ did not approve these versions in large part because they simply restated the policies they were meant to supplement. As DOJ noted in an email to VIPD on January 8, 2016, the SOPs, among other deficiencies, lacked necessary detail and provided insufficient guidance for officers regarding how to conduct FIT investigations and Force Review Board reviews. The parties agreed to revise the SOPs over the course of the most recent Summit, held February 10 and 11 on St. Croix, and DOJ was provided with the most recent draft on February 16. DOJ is currently reviewing the SOPs and hopes the Parties can agree on final versions soon.

VIPD also met (again, with reservations) the fourth goal, which required it to establish an on-call system whereby off-duty supervisors will be called and required to respond to use-of-force incidents when no supervisors are on duty. While uncertain regarding the system’s efficacy at this point, DOJ is pleased that VIPD succeeded in putting a system into place and

began on-call rotations. In addition, as DOJ noted in an email to VIPD on December 22, 2015, DOJ was concerned with VIPD's initial actions to address this goal because two identical directives were distributed: one from Acting Deputy Chief Corneiro, on St. Croix, and one from St. Thomas Chief Foy. When different chiefs from different islands send out the same directive, it undermines VIPD's efforts to function as a single police department, rather than two separate ones. Having alerted VIPD to this concern, DOJ was pleased to see Commissioner Richards distribute a department-wide directive on January 27, 2016 regarding the call-out procedure for off-duty supervisors. Soon, DOJ hopes to confirm that the on-call system is not only functioning but is doing so in an effective manner that enables the VIPD to timely respond to and investigate officers' uses of force, even when no supervisor is on duty.

VIPD met the sixth goal, which required the Virgin Islands Attorney General's Office to provide VIPD with a log of proceedings initiated as a result of VIPD officer actions. DOJ and the Monitoring Team received the log on January 5. On January 7, the Monitoring Team confirmed that VIPD is also entering the information from the log into its Early Intervention Program, called IAPro, thus bringing VIPD into compliance with Consent Decree paragraph 60(h).

Finally, VIPD met the seventh goal, which required the VIPD to conduct an IAPro summit on December 21 as part of an effort to equip its supervisors to better track the status of cases and increase accountability. The summit covered topics such as the input of remedial and missed training incidents; entry of use-of-force incidents; and new configurations and modules for the IAPro system. In light of the summit's completion, DOJ expects VIPD to more effectively use its early intervention system to supervise, manage, and evaluate its officers.

As acknowledged in the VIPD's own February 12 filing that establishes new deadlines for delinquent goals, Dkt. # 194, VIPD failed to meet four of this quarter's nine goals. Specifically, VIPD held no Force Review Boards, though it committed itself to conducting two; VIPD was unable to address a backlog of citizen complaint cases; VIPD neglected to complete course materials and schedule training regarding adult learning concepts; and VIPD failed to design and begin implementing a training support process designed to augment and improve VIPD's current training regimen. These failures, like so many other shortcomings in quarters past, undermine the department's push toward compliance with the Consent Decree and have stalled the momentum VIPD gained after meeting all of its goals during the previous quarter. Moving forward, once again, DOJ will continue to work with VIPD to meet its delinquent goals as well as the 20 outstanding provisions of the Consent Decree.

Overall Compliance Efforts

In DOJ's previous quarterly report regarding the VIPD's efforts to meet its goals, DOJ emphasized—with some alarm—that the Territory's self-imposed deadline of August 2016 to attain substantial compliance with the Consent Decree was a mere nine months away, yet the VIPD had not nudged a single paragraph into compliance for more than a year. That August deadline—which the Court has said it expects VIPD to meet—is now only six months away, and the dry spell during which VIPD has brought no new paragraphs into compliance now stands at a year and a half. The DOJ does not expect VIPD to meet the August 2016 deadline. DOJ does expect VIPD to develop and follow a viable, comprehensive compliance plan—that follows a rational timetable—that identifies all outstanding provisions; includes incremental action steps with useful, realistic deadlines designed to help VIPD comply with each outstanding provision; and identifies an individual responsible for completing each action step.

To date, despite numerous attempts, VIPD has yet to assemble a robust, thoughtful plan that incorporates all of these elements.

VIPD provided its most recent Compliance Plan and Status Report to DOJ and the Monitoring Team on February 10, 2016, as part of the VIPD Quarterly Status Report required by Paragraph 98 of the Consent Decree. Even if one ignores an apparent glitch that caused some information to be repeated, verbatim, in multiple locations in the report (information regarding Goal 4Q5-4 is repeated five times, for instance), a cursory glance at the document unveils a host of other deficiencies, all substantive, that are emblematic of VIPD's compliance efforts as a whole. The report marches through numerous goals that have not been met or sub-paragraphs that are out of compliance and then lists "action steps" designed to serve as stepping stones that, if followed, will yield compliance with the relevant goal or paragraph (in some instances, a goal and a sub-paragraph are one and the same). Repeatedly, all "action steps" listed under a goal will have the exact same deadlines (for instance, December 18, 2015) rather than strategically sequenced deadlines designed to help VIPD make progress toward the goal incrementally. In addition, many of the deadlines in the report are not only duplicative but they also passed months ago (the deadline of December 18, 2015, which occurs more than 50 times in the report, passed two months ago) and some deadlines passed a year ago (for example, February 20, 2015) even though the tasks associated with those deadlines remain unfinished.

There are also problems with the "progress notes" associated with the goals and action steps in the report. Many progress notes are simply copied and pasted into different sections associated with different goals, and some progress notes seem to have little to do with the goals with which they are associated. For example, the fourth action step under Goal/Paragraph

32(b) requires VIPD to train chiefs and deputy chiefs to analyze uses of force. The progress notes, which can also be found elsewhere in the report plugged into different goals, state that training was provided to “some commanders and supervisors” in November, with more trainings to be had “in the future.” The notes do not specify the training topics and they say nothing about specifically training chiefs and deputy chiefs. Neither do they say anything about when, exactly, the “future” training will take place. The report also repeatedly identifies VIPD directors—the director of training, for instance, or of internal affairs—as the action officer responsible for accomplishing an action step rather than the VIPD officers to whom the directors are (presumably) delegating so many of these tasks. The report also makes multiple references to an audit that is “being done already,” with no date by which the audit, now long overdue, will be complete. Other issues persist throughout the report, as well. Such problems cannot permeate a Compliance Plan if VIPD is to effectively use it to actually comply with its Court-ordered obligations.

Aside from an insufficient Compliance Plan, a plethora of impediments continue to hamper VIPD’s momentum. While DOJ has repeatedly identified such shortfalls in its previous quarterly reports, we will do so again here. Significant barricades blocking VIPD’s path include the insufficient supervision of officers; a sluggish auditing process; and inadequate training review methods.

VIPD’s most significant setback is perhaps its shortage of knowledgeable, capable supervisors who can effectively lead their subordinates. Ultimately, VIPD’s supervisors, managers, and commanders are responsible for writing force reports or ensuring they are written properly; reviewing the use of force or ensuring it is reviewed properly; investigating citizen complaints or ensuring they are investigated thoroughly; and training officers or

ensuring they are trained properly. As DOJ has noted in the past, VIPD does indeed have a group of competent, committed leaders who are working hard to attain compliance and ensure VIPD is a progressive, modern policing agency. But this group is small. Both Commissioner Richards and Deputy Commissioner Griffin have repeatedly expressed their commitment to reform and have taken action to try to ensure success. Among other measures, they have put into place a Director of Professional Standards whose experience working as a police officer for a major police agency elsewhere is a tremendous asset. But such leaders are few within the VIPD, and their effectiveness is limited. Without a sizeable staff of committed, skilled supervisors, attaining substantial compliance—and then sustaining it—will continue to be a possibly insurmountable task. VIPD must either train its current cadre of supervisors to properly perform their duties or replace them with others who will.

VIPD must also ensure it is conducting audits in a timely, efficient fashion. The process of auditing—which Paragraph 69 of the Consent Decree requires—provides VIPD with an essential assessment of its training efforts, force reviews, complaint investigations, and other functions. In order for the information to be useful, however, the audits must be thorough, organized, and timely. VIPD has made tremendous progress in this area, and the commander of its Audits & Inspections Unit is very capable and committed to her work. However, the unit is small, and DOJ understands that its members have at times had difficulty gathering the information necessary to conduct their work. For this reason and others, audits—while greatly improved in quality over the course of the Consent Decree—are notoriously late. It was not until the second quarter of 2015 that VIPD produced audits for the third and fourth quarters of 2014 and the first quarter of 2015. And as of the date of this filing, neither the monitoring team nor the DOJ has received VIPD's audits for the third and fourth quarters of

2015. VIPD must dedicate more resources and information to its audit unit so that the unit may more efficiently identify and help address weaknesses in the department's efforts to effectively police members of the Territory's various communities.

VIPD needs to ensure it is properly training its officers, as well. While DOJ has observed some very good use-of-force scenario-based training that VIPD has provided to its officers, VIPD does not have in place a comprehensive, methodical system to "coordinate and review all use of force policy and training to ensure quality, consistency, and compliance with applicable law and VIPD policy," per Paragraph 73 of the Consent Decree. Neither does the VIPD have in place a process to conduct needs assessments "to ensure that use of force training is responsive to the knowledge, skills, and abilities of the officers being trained," per Paragraph 74(g) of the Decree. In order to properly review its force training, which it must do at least twice a year, VIPD must assess and analyze how force is being used in the field by, for example, analyzing trends in use-of-force incidents and citizen complaints. If VIPD sees a spike in citizen complaints regarding the use of force, for instance, the surge may reveal a gap in training that needs to be filled. VIPD cannot ensure it is providing its officers with quality, effective training until it is effectively evaluating and tracking that training.

Conclusion

It has been a year and a half since the VIPD brought into compliance a complete Consent Decree paragraph; thus we now find ourselves approaching year eight of the Decree with 20 of 51 paragraphs languishing out of compliance. Despite expectations that VIPD would push a few more paragraphs into compliance over the past three months, it failed to do so, instead only moving a single sub-paragraph into compliance and attaining about half of the quarterly goals the department set for itself. Meeting the August 2016 deadline now seems

more implausible than ever. But substantial compliance is still possible. With assistance from DOJ and the Monitoring Team, VIPD must create a rational, prudent compliance plan that sets realistic, incremental deadlines for attaining compliance with paragraphs and associated action steps. The plan must assign individual officers to ensure each action step is accomplished, and the plan must address the various barriers—such as insufficient supervision, overdue audits, and deficient training assessments—that have persistently prevented VIPD from gaining ground.

Respectfully submitted,

FOR THE UNITED STATES:

February 19, 2016

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CERTIFICATE OF SERVICE

I hereby certify that a copy of Plaintiff's Report Regarding Defendants' Efforts to Comply With Quarterly Goals by February 5, 2016 was filed electronically on February 19, 2016 using the CM/ECF system, which will send electronic notification to the following:

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