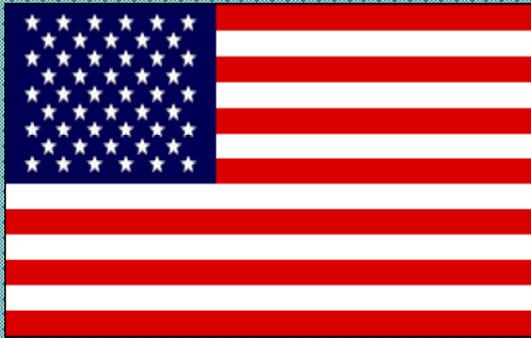
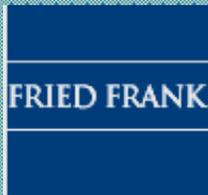


# **First Quarterly Report of the Independent Monitor for the Virgin Islands Police Department**



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## Executive Summary

This is the first quarterly report of the Office of the Independent Monitor for the Virgin Islands Police Department (“OIM” or the “Monitor”). The OIM, led by Michael R. Bromwich, the Independent Monitor, was established in early January 2010 to monitor compliance by the Territory of the Virgin Islands (the “Virgin Islands”) and the Virgin Islands Police Department (“VIPD” or the “Department”) with the Consent Decree entered by the United States District Court for the Virgin Islands on March 23, 2009. Paragraph 96 of the Consent Decree requires the Monitor to “issue quarterly written, public reports detailing the Territory of the Virgin Islands’ compliance with and implementation of each substantive provision” of the Consent Decree.

The Consent Decree reflects the agreement of the Virgin Islands, VIPD, and the United States Department of Justice (“DOJ”) (collectively, the “Parties”) to resolve a lawsuit brought by the United States alleging that the Virgin Islands and VIPD have 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, and the failure to establish consistent policies, procedures, and practices that appropriately guide and monitor the actions of VIPD officers and the VIPD’s response to those actions.”

The OIM is responsible for monitoring and reporting VIPD’s progress toward achieving compliance with all of the Consent Decree’s substantive requirements. In addition to meeting with VIPD personnel and visiting a full range of VIPD facilities in the St. Thomas, St. John, and Water Island District and the St. Croix District,<sup>1</sup> our monitoring activity during this first quarter has included, among other things, the review of a significant number of internal investigations conducted by the Internal Affairs Bureau (“IAB”) and the chain of command in the Zones during 2009; the review of thousands of incident and arrest reports from 2009 to identify potential use of force incidents; the monitoring of the

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<sup>1</sup> VIPD is divided into two Districts -- the St. Thomas, St. John, and Water Island District and the St. Croix District. Each District has its own command structure headed by a Chief of Police for that District. Each of the Districts is subdivided into Zones, which are analogous to precincts in other police departments. The Districts are unified under the Office of the Police Commissioner.

status of VIPD's citizen complaint intake and tracking processes; the observation of new recruit and in-service training; the review of training curricula and lesson plans, as well as the training records of individual officers and instructors; the observation of disciplinary proceedings; and the provision of technical assistance to VIPD, including the review of draft policies and directives.

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

Last year, prior to the appointment of the Monitor, VIPD submitted to DOJ draft versions of its revised Use of Force Policy, Utilization of the Taser Policy, and Reporting Use of Force Policy. On October 14, 2009, DOJ provided VIPD with detailed comments on these draft policies. DOJ commented that, although these draft policies represented a "promising start," none of the draft policies was "fully responsive to the provisions of the Consent Decree." In particular, DOJ commented that the draft Utilization of the Taser Policy was "critically inadequate and inconsistent with accepted best practices."<sup>2</sup>

In December 2009, VIPD established a Policies and Procedures Committee responsible for developing, reviewing, and revising all of the Department's policies and standard operating procedures. Although the members of the Policy and Procedures Committee appear to take their assignment to the Committee seriously and we found the Committee's discussions to be serious and responsible, the Committee's progress with respect to development of the Department's revised use of force-related policies has been unacceptably slow. These policies -- including the Use of Force Policy, the Utilization of the Taser Policy, and the Reporting Use of Force Policy -- are cornerstones of the Consent Decree's requirements and fundamental to the Department's efforts to reform its use of force program. Delays in the implementation of the revised use of force policies undermine the Department's ability to develop appropriate new recruit and in-service training programs and contribute to the absence of clear guidance to VIPD officers regarding what constitutes appropriate -- and inappropriate -- use of force.

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<sup>2</sup> By order of the Police Commissioner, as of November 18, 2009, VIPD suspended the use of Tasers.

## Survey of Use of Force Incidents

Until VIPD's use of force reporting program is implemented, including the consistent and reliable completion of Reporting Use of Force Forms, the Department does not have a system for tracking the frequency and nature of uses of force by VIPD officers. Therefore, in order to develop information about the frequency and types of uses of force by VIPD officers, we began conducting a labor-intensive review of all Form 1-A incident reports and arrest reports completed by VIPD officers in both Districts during the period July 1 through December 31, 2009. This quarter, we completed our review of more than 10,000 Form 1-A incident reports and arrest reports on file in the Records Bureau for the St. Thomas District. The chart below describes the 36 use of force incidents that we identified by the type of force that the involved officers appear likely to have used.

### Uses of Force by VIPD Officers in the St. Thomas District July 2009 – December 2009

Type of Force Used	Number of Incidents
Forcible handcuffing/hand controls	14
Take down/hand strikes	9
OC spray	1
Baton/ASP	0
Taser	4
Pointing of firearm	7
Discharge of firearm	1

As we have discussed with VIPD and DOJ, we believe that these statistics significantly underrepresent the actual number of uses of force by VIPD officers in the St. Thomas District during the six-month time period we reviewed.

## Public Information Regarding the Citizen Complaint Process

During this first quarter, VIPD has made significant progress in developing a public information program regarding the citizen complaint process. VIPD has prepared a standard Citizen Complaint Form and has purchased lockable complaint form drop boxes to be placed in VIPD Zone stations, substations, and mobile substations. VIPD also has developed a compliment/complaint informational brochure designed to inform the public about the complaint process and its right to make a complaint against VIPD officers, as well as to praise officers for outstanding work.

VIPD reports that it has posted the compliment/complaint brochure on the Department's website ([www.vipd.gov.vi](http://www.vipd.gov.vi)). VIPD intends to display the brochures in every police facility accessible to the public and in other public areas, including libraries, community group facilities, and community centers. VIPD also intends to display informational posters regarding the complaints process in VIPD facilities and other public buildings. VIPD reports that it is in the process of establishing a toll-free complaint hotline through which members of the public will be able to contact IAB with complaints regarding VIPD officers. Finally, VIPD's Public Information Office is in the process of creating a public service announcement campaign to inform the public about the citizen complaints process.

### **Misconduct Investigations**

This quarter, we began reviewing IAB and Zone investigations conducted in the St. Thomas and St. Croix Districts during 2009. Our review of VIPD's misconduct investigations revealed several significant issues relating to the investigations conducted by IAB, including the following:

- Absence of final reports. We found that IAB investigation files frequently do not contain a written final report summarizing the evidence and stating the investigator's findings.
- Failure to include one of the required findings. Our review found that none of the 32 citizen complaint IAB investigations that we reviewed in the St. Thomas and St. Croix Districts contained one of the findings required under the Consent Decree -- sustained, not sustained, exonerated, or unfounded. We found that IAB investigators typically describe their findings without specifically assigning one of the findings required under the Consent Decree.
- Untimely investigations. VIPD misconduct investigations are subject to provisions in VIPD's collective bargaining agreements that generally require that VIPD institute disciplinary action related to findings of misconduct within 50 days of VIPD's receipt of notice of the allegations. This time limitation poses a significant issue for the timely completion of IAB and Zone investigations and may affect the ability of VIPD to impose discipline in certain cases.

- General completeness and sufficiency. We evaluated each of the closed misconduct investigations we reviewed as to whether the investigation was “complete” and “sufficient.”<sup>3</sup>
  - Of the 18 St. Thomas District IAB citizen complaint investigations we reviewed, we rated only 3 as both complete and sufficient. We found that 6 of these cases were sufficient, but not complete.
  - Only 4 of the St. Croix District IAB citizen complaint investigations that we have reviewed were finished by the investigator. Of these 4 finished cases, we found that 3 were both complete and sufficient. However, 4 cases is obviously a limited sample size and is insufficient for us to draw any general conclusions yet as to the general quality of IAB investigations conducted in the St. Croix District.
  - Finally, we found that the Zones frequently fail to report back to IAB regarding the status and findings of misconduct cases assigned to the Zones to investigate by the chain of command. Of the 37 cases from 2009 that we identified as having been referred to the Zones by IAB for the St. Thomas District, IAB records reflect that the Zones reported back in only 9 of those cases.

To help VIPD improve the quality and consistency of its internal misconduct investigations, and with the permission of the District of Columbia Metropolitan Police Department (“MPD”), we provided the Director of IAB with model investigation checklists and templates developed by MPD.

### **Risk Management System Development**

VIPD has purchased IAPro risk management software from CI Technologies as the Department’s off-the-shelf solution to meeting the

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<sup>3</sup> We rated an investigation “complete” if it reflected the performance of all of the substantive investigative steps and contained all of the documentation required both by the Consent Decree and by generally accepted police practices. We rated an investigation “sufficient” if the evidence and analysis reflected in the investigation file were adequate to support a reasonable and defensible conclusion, even in cases where certain investigative procedures or analyses had not been completed.

Consent Decree's requirements relating to the development of a Risk Management System ("RMS"). IAPro software is used by police agencies in many jurisdictions across the United States. VIPD also reports that, in late March 2010, a representative from IAPro conducted training on the use of the software for IAB agents in both Districts. This training covered the basic operations of the IAPro software, as well as the entry of information related to citizen complaints. VIPD reports that it has designated a senior IAB agent to serve as the RMS coordinator responsible for coordinating the implementation of the IAPro RMS.

### **Training**

VIPD acknowledges that its Training Director, who was hired by VIPD last year, has not yet developed a plan for reviewing the Department's use of force-related training program and curricula, conducting regular training needs assessments, and meeting the other requirements of the Consent Decree relating to training. This quarter, we began reviewing in-service and instructor training records for personnel in the St. Thomas and St. Croix Districts. Although this review is ongoing, our initial observation is that in-service training for VIPD officers, including in-service training related to the use of force, has been infrequent and irregular.

We monitored the following use of force-related training sessions:

- New recruit use of force training. Because the revised Use of Force Policy is still being developed, this training was based on the VIPD's existing policy and course materials, all of which are out of date. While the instructor had a good demeanor and the class was interactive, there was relatively little emphasis on the use of force continuum, threat assessment, and decision-making regarding the appropriate level of force, perhaps because the policy has not been established. Currently, there is no formal lesson plan for use of force training, and the lack of such a lesson plan contributed to confusion among the recruits about the Department's requirements related to, among other things, use of force reporting and use of force by off-duty officers.
- New recruit baton training. This training involved instruction on techniques for drawing the baton and basic strikes. We found that the instructor was very knowledgeable, had an excellent presence with the class, and provided appropriate information about safety and prohibited strikes.

- Supervisor OC spray and baton refresher courses. We found that the oleoresin capsicum (“OC”) spray and ASP baton training sessions generally were well done and delivered appropriate information about accepted police practices with those tools. While the classes were interactive and included active participation from the attendees, there was no direct, individual instruction regarding each supervisor’s ability to appropriately deploy, use, and supervise the use of the devices.
- Supervisor training regarding the Consent Decree. We also monitored supervisor training regarding the Consent Decree, which was delivered by the Compliance Coordinator. The instructor was very well prepared and used a detailed PowerPoint presentation that thoroughly covered the Consent Decree’s requirements. We monitored a separate supervisor training session led by the Director of IAB that covered the requirements of the Consent Decree and supervisors’ roles in processing citizen complaints.

Finally, we made the general observation that VIPD instructors should exercise tighter control over sign-in procedures and that greater care needs to be devoted to maintaining records reflecting officers’ attendance at training.

## **Conclusion**

Based on our monitoring during this first quarter, we believe that the leadership of VIPD -- including the Police Commissioner, District Chiefs and Deputy Chiefs, and key Directors -- is committed to implementing the Consent Decree’s reforms and effecting genuine improvements in the Department’s use of force-related programs. As reflected in this report, however, VIPD has gotten off to a slow start. Many of the obsolete policies and unsatisfactory conditions described in the DOJ’s technical assistance letter from October 2005 remain unchanged more than a year after entry of the Consent Decree.

If VIPD is to accomplish its stated goals of fully implementing the large number of reforms required under the Consent Decree and bringing about early termination of the Consent Decree, compliance must become one of the highest priorities of the Department. VIPD must find ways to expedite the process of drafting and obtaining approval for the policy revisions required under the Consent Decree, developing training curricula and lesson plans and ensuring that all officers receive regular and appropriate training, creating an efficient and thorough regime for

receiving and investigating allegations of excessive force and other misconduct, and establishing an effective personnel management and supervision infrastructure. All of these reforms present major challenges and, we fully appreciate, will take some time to implement. However, if substantial compliance with the Consent Decree is to be achieved, VIPD must translate its willingness to reform into measurable progress under the Consent Decree in the coming months and quarters.

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# Introduction

This is the first quarterly report of the Office of the Independent Monitor for the Virgin Islands Police Department (“OIM” or the “Monitor”). The OIM, led by Michael R. Bromwich, the Independent Monitor, was established in early January 2010 to monitor compliance by the Territory of the Virgin Islands (the “Virgin Islands”) and the Virgin Islands Police Department (“VIPD” or the “Department”) with the Consent Decree (referred to at times in this report as the “CD”) entered by the United States District Court for the Virgin Islands on March 23, 2009. Paragraph 96 of the Consent Decree requires the Monitor to “issue quarterly written, public reports detailing the Territory of the Virgin Islands’ compliance with and implementation of each substantive provision” of the Consent Decree.

The Consent Decree reflects the agreement of the Virgin Islands, VIPD, and the United States Department of Justice (“DOJ”) (collectively, the “Parties”) to resolve a lawsuit brought by the United States alleging that the Virgin Islands and VIPD have 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, and the failure to establish consistent policies, procedures, and practices that appropriately guide and monitor the actions of VIPD officers and the VIPD’s response to those actions.”<sup>1</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>2</sup> The 104 paragraphs of the Consent Decree contain a broad range of substantive requirements for reform in areas such as the revision of VIPD’s use of force-related policies, the reporting and investigation of use of force incidents, the receipt and investigation of complaints alleging misconduct by VIPD officers, the development of systems for managing and supervising VIPD officers, the discipline of officers found to have engaged in misconduct, and the training of officers

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<sup>1</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.) (the “DOJ Complaint”).

<sup>2</sup> CD ¶ 3.

to properly use of force in accordance with VIPD policy, law, and existing best practices in policing.

The OIM is responsible for monitoring and reporting VIPD's progress toward achieving compliance with all of the Consent Decree's substantive requirements. During this first quarter of our monitoring, we met frequently with key VIPD officials who have responsibilities central to the implementation of the Consent Decree's reforms. These officials include Police Commissioner Novelle E. Francis, the Chiefs and Deputy Chiefs for the St. Thomas, St. John, and Water Island District and the St. Croix District, the Department's Legal Counsel, the Director of the Internal Affairs Bureau ("IAB") and IAB staff members, the Director of Training and members of the training staffs in both Districts, the Public Information Director, and the staff in the Records Bureau.<sup>3</sup> In addition to these meetings relating to specific monitoring activities, we also held regular monthly meetings that included not only top VIPD officials but also representatives from the Virgin Islands Office of the Attorney General and DOJ.

We also worked closely with Detective Eugene Alcendor, who was appointed by Commissioner Francis to be the Department-wide Compliance Coordinator for the Consent Decree.<sup>4</sup> Finally, we met with various commanders, officers, and union representatives throughout the Department to discuss the Consent Decree's requirements and to address questions they had concerning compliance with the Consent Decree. We have found VIPD personnel from all ranks and assignments to be open with us and cooperative with our monitoring activity. The significant majority of the VIPD officers with whom we have met appear to be supportive of the Consent Decree's reforms and VIPD's efforts to modernize the Department's use of force-related programs.

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<sup>3</sup> VIPD is divided into two Districts -- the St. Thomas, St. John, and Water Island District and the St. Croix District. Each District has its own command structure headed by a Chief of Police for that District. Each of the Districts is subdivided into Zones, which are analogous to precincts in other police departments. The Districts are unified under the Office of the Police Commissioner. For ease of reference, in this report we refer to the St. Thomas, St. John, and Water Island District as the St. Thomas District.

<sup>4</sup> Paragraph 88 of the Consent Decree requires VIPD to assign a full-time Compliance Coordinator who will serve as a liaison among the Parties and the Monitor and is responsible for coordinating VIPD's compliance and implementation activities related to the Consent Decree.

In addition to meeting with VIPD personnel and visiting a full range of VIPD facilities in both Districts, our monitoring activity during this first quarter has included, among other things, the review of a significant number of internal investigations conducted by IAB and the chain of command in the Zones during 2009; the review of thousands of incident and arrest reports from 2009 to identify potential use of force incidents; the monitoring of the status of VIPD's citizen complaint intake and tracking processes; the observation of new recruit and in-service training; the review of training curricula and lesson plans, as well as the training records of individual officers and instructors; the observation of disciplinary proceedings; and the provision of technical assistance to VIPD, including the review of draft policies and directives. The Compliance Assessment section of this report details the OIM's findings and observations based on our monitoring activity this quarter.

With the notable exception of its initial work on revising the Department's general use of force policy, VIPD's compliance efforts with respect to the substantive requirements of the Consent Decree were insignificant during the nine-month period between entry of the Consent Decree in March 2009 and the beginning of our monitoring in January 2010. Since the beginning of 2010, VIPD has started to focus on developing the revised policies and new programs required under the Consent Decree, but, as VIPD acknowledged in its April 6, 2010 Status Report, "VIPD is just starting the CD compliance."<sup>5</sup> This report should make clear that VIPD has an enormous amount of work to do if the Department is to achieve compliance with the Consent Decree. In order to meet its stated goals of "complet[ing] the reforms required by the Consent Decree and, ultimately, to be released from the Decree," VIPD must devote substantially more resources and management attention to advancing the Department's compliance efforts with respect to the entire

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<sup>5</sup> Status Report of the Virgin Islands Police Department, dated April 6, 2010 (the "VIPD April 2010 Status Report"), at 2. Paragraph 98 of the Consent Decree requires VIPD to submit periodic status reports to the Monitor, the Virgin Islands Attorney General's Office, and DOJ "delineating the steps taken by the VIPD during the reporting period to comply with each provision of the [Consent Decree]." The VIPD April 2010 Status Report is the fourth status report submitted by VIPD since the Court's entry of the Consent Decree. The first three status reports, which were prepared prior to the appointment of a Monitor, are dated June 19, 2009, September 19, 2009, and December 18, 2009.

range of requirements agreed upon by the Parties and imposed by the Consent Decree.<sup>6</sup>

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<sup>6</sup> VIPD April 2010 Status Report at 2.

# Background

## I. The *Virgin Islands Daily News* “Deadly Force” Article

“Virgin Islands police officers are getting away with murder.” This was the first line of a 44-page special investigation report entitled “Deadly Force” that the *Virgin Islands Daily News* published on December 30, 2003.<sup>10</sup> The *Virgin Islands Daily News* claimed to have examined 85 shootings by Virgin Islands police officers during the nearly two decades between January 1985 and December 2003 and reported the following troubling information about the Department’s use of deadly force:

- In the 85 shooting incidents reviewed, 65 of the victims were unarmed;
- Those 85 police shootings resulted in the deaths of 28 people;
- Only 17 of the 72 people who were shot at by the police during these incidents and survived were charged with a crime;
- In an unspecified number of these cases, VIPD records lacked information about involved officers and shooting victims and the findings of any investigation into the shootings that might have been conducted;
- VIPD employed an outdated use of force policy that failed to provide officers with clear guidelines regarding the circumstances under which the use of deadly force would be justified and included illegal guidance indicating that deadly force could be used to protect property;
- Although VIPD required officers to pass an annual firearms certification examination, VIPD had not conducted annual weapons certifications since 2001; and
- In at least six cases during the 1990s and early 2000s, VIPD officers shot at moving vehicles.

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<sup>10</sup> Lee Williams, *Deadly Force – A Special Investigative Report*, THE VIRGIN ISLANDS DAILY NEWS, Dec. 30, 2003.

The report also included descriptions of 77 cases in which either officers had allegedly pointed or fired their weapons under questionable circumstances or the case files related to the shooting incidents contained little or no information reflecting that any investigation of the use of force was conducted. The report also summarized 20 cases in which VIPD officers, often off-duty at the times of the incidents, brandished or fired weapons during personal arguments or fights.

The disturbing and unflattering portrait presented by the “Deadly Force” report was one of a police department whose officers were poorly trained, too quick to use firearms, and immune from serious consequences for improper and in some cases illegal uses of deadly force. The article called for various actions to be taken in response to its findings, including an investigation by the Special Litigation Section of DOJ’s Civil Rights Division.

## II. The DOJ Investigation

Soon after the “Deadly Force” report, in March 2004, the Civil Rights Division of DOJ initiated an investigation of VIPD, pursuant to the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141 (“Section 14141”), to determine whether the Virgin Islands and VIPD had engaged in a pattern or practice of excessive use of force.

On October 5, 2005, DOJ issued a 27-page letter to VIPD containing a number of preliminary findings and recommendations regarding VIPD’s use of force-related policies and practices.<sup>11</sup> The preliminary findings and recommendations contained in the DOJ Technical Assistance Letter included the following:

- VIPD’s current use of force policy “is inconsistent with applicable legal standards and does not outline the limitations on the use of deadly and non-deadly force, including de-escalation techniques.”<sup>12</sup>
- The Department’s use of force continuum, which is included as an attachment to its use of force policy, “is incomplete” because

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<sup>11</sup> Letter from Shanetta Y. Cutlar to Attorney General Kerry Drue, Commissioner Elton Lewis, and Attorney Daniel Mattarangas-King regarding “United States Department of Justice Investigation of the Virgin Islands Police Department” (Oct. 5, 2005) (referred to herein as “the DOJ Technical Assistance Letter”).

<sup>12</sup> *Id.* at 5.

it fails to include appropriate and understandable diagrams describing the continuum, lacks appropriate definitions of force, and provides inadequate guidance regarding the types of force and weapons that are authorized to be used under various circumstances.<sup>13</sup>

- VIPD policies “fail to provide clear guidance and comprehensive procedures regarding the use of firearms.”<sup>14</sup>
- The Department’s policies should be revised to provide detailed guidance and procedures for reporting all uses of force beyond unresisted handcuffing on “a form dedicated solely to recording use of force information.”<sup>15</sup>
- VIPD lacks a clear policy on reviewing uses of force and conducting reliable investigations of use of force incidents that might have involved excessive or avoidable force or potentially criminal misconduct.<sup>16</sup>
- VIPD policy should be “revised to state that all shootings and uses of force, whether they involve a weapon or not, be reviewed by VIPD officials.”<sup>17</sup>
- The Department’s citizen complaint forms are “inadequate and inconsistent with generally accepted police practices,” and its citizen complaint policy should be revised to require an investigation of every complaint.<sup>18</sup>
- VIPD should develop and implement a “formal, structured and consistent system for determining and imposing discipline,” and DOJ expressed concern regarding “VIPD’s short 50-day statute of limitations for instituting disciplinary action.”<sup>19</sup>

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13 *Id.* at 6-7.

14 *Id.* at 7.

15 *Id.* at 11.

16 *Id.* at 12.

17 *Id.* at 13.

18 *Id.* at 15.

19 *Id.* at 21-22.

- The Department “does not have, but should adopt, a risk assessment system.”<sup>20</sup>
- There are no “standard curricula or lesson plans” for new recruit training and “no structured training program for experienced officers.”<sup>21</sup>

More than two years after the issuance of the DOJ Technical Assistance Letter, DOJ filed a complaint against the Virgin Islands and VIPD under Section 14141 alleging that VIPD was “engaging in a pattern or practice of subjecting individuals to the use of excessive force by the VIPD.”<sup>22</sup> DOJ’s Complaint further alleged that the Virgin Islands and VIPD “have tolerated this conduct through their failure to adequately train, supervise, investigate, and discipline officers, and their failure to establish consistent policies, procedures, and practices that appropriately guide and monitor the actions of VIPD officers and the VIPD’s responses to those actions.”<sup>23</sup>

### III. The Consent Decree

On December 23, 2008, the Parties filed the Consent Decree with the United States District Court for the District of the Virgin Islands in order to resolve DOJ’s lawsuit against the Virgin Islands and VIPD. Five years after DOJ initiated its investigation of VIPD, the Court entered the Consent Decree as an order of the Court on March 23, 2009. The 104-paragraph Consent Decree is a lengthy document that details specific policies, procedures, and reforms that VIPD must develop and implement in the areas of use of force; documenting, evaluating, and reviewing uses of force; receiving, tracking, and investigating complaints by members of the public; the management and supervision, including discipline, of VIPD officers; and the training of officers on use of force issues.

The Consent Decree also provides for the selection and appointment of an Independent Monitor “who shall monitor and report on the VIPD’s implementation of” the Consent Decree.<sup>24</sup> The Monitor’s

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<sup>20</sup> *Id.* at 23.

<sup>21</sup> *Id.* at 24, 26.

<sup>22</sup> DOJ Compl. ¶ 1.

<sup>23</sup> *Id.*

<sup>24</sup> CD ¶ 82.

role under the Consent Decree is broad in some respects and limited in others. The Monitor is charged with conducting “compliance reviews to ensure that VIPD has implemented and continues to implement all measures required” under the Consent Decree.<sup>25</sup> The Monitor also is authorized to make recommendations to the Parties intended to promote the full and timely implementation of the Consent Decree’s reforms.<sup>26</sup> The Consent Decree is clear, however, that the Monitor possesses only the duties, responsibilities, and authority conferred by the Consent Decree and that the “Monitor shall not, and is not intended to, replace or take over the role and duties of the Governor of the [Virgin Islands] or the Police Commissioner.”<sup>27</sup>

By its terms, the Consent Decree will terminate five years after the effective date of the Consent Decree, which is March 23, 2014. The Consent Decree may terminate before the expiration of this five-year period if the Parties agree that the Virgin Islands and VIPD “are in substantial compliance with each of the provisions of [the Consent Decree], and have maintained substantial compliance for at least two years.”<sup>28</sup>

#### **IV. The Office of the Independent Monitor**

The Consent Decree required the Parties to jointly select an Independent Monitor within 150 days from the effective date of the Consent Decree.<sup>29</sup> On or about June 10, 2009, the Virgin Islands issued a Request for Proposal (“RFP”) from qualified firms or individuals to serve as the Independent Monitor for the Consent Decree.<sup>30</sup> After a lengthy procurement process that lasted more than six months, the Virgin Islands and VIPD completed the selection process and contracted for the

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<sup>25</sup> CD ¶ 86.

<sup>26</sup> CD ¶ 85. VIPD has emphasized that it welcomes and expects technical assistance from the monitoring team.

<sup>27</sup> *Id.*

<sup>28</sup> CD ¶ 103. The Consent Decree does not define “substantial compliance” nor establish standards for measuring whether VIPD has achieved substantial compliance with each of the substantive requirements of the Consent Decree. We anticipate that the development of substantial compliance standards is an issue that the Parties and the Monitor will address in future quarters.

<sup>29</sup> CD ¶ 82.

<sup>30</sup> Government of the Virgin Islands Request for Proposal – Negotiation Professional Services, RFP No. 0018-2009 (June 10, 2009), at 1.

services of a monitoring team led by Michael R. Bromwich, a partner in the Washington, D.C. office of Fried, Frank, Harris, Shriver & Jacobson LLP (“Fried Frank”), on December 31, 2009. The OIM began its first monitoring visit to the Virgin Islands on January 6, 2010.

In addition to Mr. Bromwich and attorneys and support staff from Fried Frank, the OIM is comprised of four experienced and prominent police practices experts and the international accounting firm of PricewaterhouseCoopers LLP (“PwC”). Below is a brief summary of the backgrounds of the key individual members of the monitoring team:

- Michael R. Bromwich, Independent Monitor

Mr. Bromwich is a partner at Fried Frank where he heads the firm’s Internal Investigations, Compliance, and Monitoring Practice Group. Prior to joining Fried Frank, he served as the Inspector General for DOJ from 1994 through 1999, where he led a law enforcement agency responsible for conducting criminal and administrative investigations involving the 120,000 employees of DOJ. From 2002 through June 2008, Mr. Bromwich was the Independent Monitor of the District of Columbia’s Metropolitan Police Department (“MPD”).

- Tommy P. Beaudreau, Deputy Independent Monitor

Mr. Beaudreau is a partner in Fried Frank’s Internal Investigations, Compliance, and Monitoring Practice Group. He was a member of the team that monitored MPD, where he was responsible for managing and coordinating the monitoring team’s day-to-day monitoring activity, including routine interaction with the District of Columbia, MPD, and DOJ. Mr. Beaudreau’s experience includes serving as a judicial clerk to Judge Jerome B. Friedman of the United States District Court for the Eastern District of Virginia.

- Chief Charles A. Gruber (ret.), Police Practices Coordinator

Mr. Gruber has nearly forty years of experience as a law enforcement officer and police executive. He served as the Chief of Police in four jurisdictions between 1976 and 2008 – Quincy, Illinois; Shreveport, Louisiana; Elgin, Illinois; and South Barrington, Illinois. Mr. Gruber is a former President of the International Association of Chiefs of Police (“IACP”), has chaired the IACP’s Professional Standards Committee, and is a former President of the Illinois Association of Chiefs of Police.

Mr. Gruber was a member of the team that monitored the Oakland (California) Police Department and has served as a police practices expert in connection with a number of DOJ investigations of local police agencies.

- Superintendent Ann Marie Doherty (ret.), Police Practices Expert

Ms. Doherty retired in 2003 as the Superintendent in the Office of the Police Commissioner for the Boston Police Department. During her more than twenty-five years with the Boston Police Department, Ms. Doherty attained every current sworn rank. She has a law degree from the Suffolk University Law School and has been a member of the Massachusetts Bar since 1979. From 2005 to 2008, Ms. Doherty was a police practices expert with the team that monitored MPD. She also has been a police practices expert for the DOJ Civil Rights Division, where she has focused on use of force issues.

- Chief Dennis E. Nowicki (ret.), Police Practices Expert

Mr. Nowicki is a senior public safety professional whose career spans more than forty years of public service. Mr. Nowicki retired as Chief of Police for Charlotte, North Carolina in 1999. He also was Chief of Police for Joliet, Illinois and served twenty-six years with the Chicago Police Department where he attained the rank of Deputy Superintendent. He has been active in national associations related to law enforcement, including the IACP and the Police Executive Research Forum. He is or has been a consultant to numerous organizations, including the United States Department of Homeland Security's Interoperable Communications Technical Assistance Program, DOJ's Civil Rights Division, Yale University's Child Study Center, and the National Institute of Justice. From 2002 to 2008, Mr. Nowicki was a police practices expert with the team that monitored MPD. Mr. Nowicki is an expert in many aspects of use of force training, including the "decision-point analysis" process for reviewing police-involved shootings.

- Chief Robert L. Stewart (ret), Police Practices Expert

Mr. Stewart has nearly thirty years of experience as a law enforcement officer and police executive. After twenty years with MPD and two years with the Tallahassee Police

Department, Mr. Stewart served as the Chief of the Ormond Beach (Florida) Police Department for five years. Mr. Stewart is a former Executive Director of the National Organization of Black Law Enforcement Executives. He served as the Director of Training for the Louisville Metro Police Department, the Interim Director of Public Safety for the Newark Campus of Rutgers University, and the Interim Police Director for the Camden (New Jersey) Police Department. Mr. Stewart has consulted with numerous police agencies across the United States, as well as worked as the lead consultant on a DOJ civil rights investigation and served as a monitor pursuant to the settlement of private-party litigation involving the Hobbs (New Mexico) Police Department.

While each member of the OIM plays a substantive and important role in monitoring the Virgin Island's and VIPD's progress under the Consent Decree, Mr. Bromwich, as the Independent Monitor, bears the primary and ultimate responsibility for fulfilling the Monitor's duties under the Consent Decree.

# Compliance Assessment

In this section of the report, we describe the status of VIPD’s compliance efforts with respect to each of the substantive provisions of the Consent Decree, as well as the OIM’s monitoring activity during this quarter. The organization of this section of the report parallels the organization of the Consent Decree. First, we summarize the *requirements* imposed by each substantive section of the Consent Decree. Although these summaries of the substantive requirements add significantly to the length of this report, we believe this information is necessary to provide the reader with a full discussion concerning VIPD’s progress in implementing the broad range of reforms required under the Consent Decree. Second, we provide a *status and assessment* discussion that describes and analyzes VIPD’s progress toward achieving compliance with the Consent Decree’s requirements.<sup>31</sup> Finally, where appropriate, we include *recommendations* to assist VIPD in achieving full and timely implementation of the Consent Decree’s requirements.<sup>32</sup>

## I. Use of Force Policies (CD ¶ 31)

### A. Requirements

Under paragraph 31 of the Consent Decree, 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>33</sup>
- Incorporate a use of force model that teaches officers to use, as appropriate, strategies such as disengagement, area

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<sup>31</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 of the substantive provisions of this Agreement.” CD ¶ 96.

<sup>32</sup> See CD ¶ 85.

<sup>33</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.

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>34</sup>

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

## **B. Status and Assessment**

On or about June 19, 2009, prior to the appointment of the Monitor, VIPD submitted to DOJ draft versions of its revised Use of Force Policy #08-09, Utilization of the Taser Policy #06-09, and Reporting Use of Force Policy #06-09.<sup>35</sup> On October 14, 2009, DOJ provided VIPD with detailed comments on these draft policies.<sup>36</sup> DOJ commented that, although these draft policies represented a “promising start,” none of the draft policies was “fully responsive to the provisions of the Consent Decree.”<sup>37</sup> In particular, DOJ commented that the draft Utilization of the

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<sup>34</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>35</sup> VIPD Response to Independent Monitor Quarterly Report Draft (May 5, 2010) at 7.

<sup>36</sup> Letter from Je Yon Jung to Fred Handleman, Esq. regarding “United States v. Virgin Islands, et al.” (Oct. 14, 2009). In addition to containing an overview of DOJ’s concerns regarding each of the draft policies, this letter attached written comments to all three draft policies that were prepared by a use of force policy expert retained by DOJ.

<sup>37</sup> *Id.* at 1.

Taser Policy was “critically inadequate and inconsistent with accepted best practices.”<sup>38</sup>

In December 2009, VIPD established a Policies and Procedures Committee responsible for developing, reviewing, and revising all of the Department’s policies and standard operating procedures.<sup>39</sup> The Policies and Procedures Committee is led by a Deputy Chief and includes 13 other members, including the Director of the Planning and Research Bureau, the Director of IAB, the Director of the Training Division, the Director of Human Resources, the lieutenant in charge of the Investigations Bureau, representatives from the Commissioner’s office and the St. Croix Chief’s office, and union representatives from the Police Benevolent Association (“PBA”) and the Law Enforcement Supervisors’ Union (“LESU”).

VIPD reports that the Policy and Procedures Committee currently is working on revising the Use of Force Policy in light of DOJ’s comments from October 2009 and that, upon completion of these revisions, the draft policy will be re-submitted to DOJ.<sup>40</sup>

This quarter, we monitored a meeting of the Policy and Procedures Committee. During this meeting, the Committee focused on the development of forms and procedures relating to the citizen complaints process. We found that the meeting was productive and involved thoughtful discussions regarding the forms, procedures, and systems on the agenda for that meeting. Unfortunately, however, several members of the Committee were absent from this meeting. The OIM participated in the meeting by providing comments regarding the draft citizen complaint form and the intake and tracking systems under consideration by VIPD.

Although the members of the Policy and Procedures Committee appear to take their assignment to the Committee seriously and we found the Committee’s discussions to be serious and responsible, the Committee’s progress with respect to development of the Department’s revised use of force-related policies has been unacceptably slow. These policies -- including the Use of Force Policy, the Utilization of the Taser Policy and the Reporting Use of Force Policy -- are cornerstones of the

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<sup>38</sup> *Id.* at 2. The Utilization of the Taser Policy is discussed further in Section II.B.2 below.

<sup>39</sup> VIPD April 2010 Status Report at 3.

<sup>40</sup> *Id.*

Consent Decree's requirements and fundamental to the Department's efforts to reform its use of force program. Delays in the implementation of the revised use of force policies undermine the Department's ability to develop appropriate new recruit and in-service training programs and contribute to the absence of clear guidance to VIPD officers regarding what constitutes appropriate -- and inappropriate -- use of force.

### **C. Recommendations**

We strongly recommend that VIPD make the prompt completion of the revised Use of Force Policy and revisions to the other use of force-related policies a high priority. We also encourage the Department to consider ways in which the policy development and revision process can be expedited and incorporate a sense of urgency that it currently lacks. We recommend that VIPD consider various options for accelerating the process, including potentially reconfiguring the Policy and Procedures Committee, further centralizing the policy drafting process into a smaller, more focused group, and bringing greater management attention to bear on the policy drafting and development process.

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

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

#### **1. Requirements**

The Consent Decree requires that 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) narrative descriptions of the events relating to the use of force incident by the involved officers; and (3) audiotaped statements from those officers.<sup>41</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

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<sup>41</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.

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

VIPD also must investigate all critical firearm discharges.<sup>42</sup> These reviews must account for all shots fired and the locations of all officers who discharged their weapons. In connection with the investigation of all critical firearm discharges, VIPD is required to conduct, as appropriate, ballistic or crime scene analyses, including gunshot residue and bullet trajectory tests.

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<sup>42</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.

## 2. Status and Assessment

### a. Policies and Directives

As discussed above, DOJ provided comments to VIPD regarding the Department's draft Reporting Use of Force Policy on October 14, 2009. VIPD reports that the Policies and Procedures Committee currently is revising the Reporting Use of Force Policy in light of DOJ's comments.<sup>43</sup>

Prior to the start of our monitoring, VIPD had developed its Reporting Use of Force Form -- #USVIPD/UFF2009. VIPD has distributed the Reporting Use of Force Form throughout the Department and instructed officers to begin using the form to record and report use of force incidents.<sup>44</sup> During our meetings with VIPD commanders and supervisors this quarter, we were told that VIPD personnel lacked adequate guidance regarding use of the form, including the types of incidents that constitute reportable uses of force and the process for submitting and reviewing completed use of force reports. VIPD commanders also offered comments and suggestions on the content and format of the form, which we encouraged them to share with the Compliance Coordinator.

VIPD has drafted a Directive "to provide guidance relative to reporting use of force within the guidelines as stipulated in the Consent Decree."<sup>45</sup> This Directive is designed to address questions on how to use the Reporting Use of Force Form before the Reporting Use of Force Policy has been approved and issued. VIPD provided a draft of the Directive to the OIM for our review and comment. On March 17, 2010, the OIM returned written comments on the draft Directive.<sup>46</sup> As of the end of the quarter, the Directive was awaiting final approval by the Police Commissioner. VIPD also reports that the Department has emphasized the Consent Decree's use of force reporting requirements during

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<sup>43</sup> VIPD April 2010 Status Report at 4.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> Email from Tommy Beaudreau to Det. Eugene Alcendor re "Comments on Use of Force Reporting Directive" (Mar. 17, 2009).

Commanders Call meetings that are held twice each week and during in-service training regarding the Consent Decree.<sup>47</sup>

VIPD also reports that it has installed computer terminals in all of the Zones, except for one, in both the St. Thomas and St. Croix Districts and that officers will eventually be able to use to upload use of force incident reports and information related to reviews of uses of force directly into the Department's Risk Management System ("RMS").<sup>48</sup> In the future, VIPD intends to equip these computers with audio and video recording capabilities to support use of force and misconduct investigations.<sup>49</sup>

### **b. Survey of Historical Use of Force Incidents**

Because VIPD's use of force reporting program, including the consistent and reliable completion of Reporting Use of Force Forms, has not been implemented, the Department does not have a system for tracking the frequency and nature of uses of force by VIPD officers. Therefore, VIPD currently is unable to generate reliable statistics reflecting the number of times officers pointed or fired their weapons, used batons or oleoresin capsicum ("OC") spray, or otherwise employed physical force to subdue a suspect. VIPD advised the Monitor that the only contemporaneous documentation that potentially exists regarding uses of force by VIPD officers would be contained in general incident reports -- known as Form 1-As -- (including supplements to Form 1-As) or arrest reports prepared by officers.

Therefore, in order to develop information about the frequency and types of uses of force by VIPD officers, we began conducting a labor-intensive review of all Form 1-A incident reports and arrest reports completed by VIPD officers in both Districts during the period July 1 through December 31, 2009. This quarter, we completed our review of more than 10,000 Form 1-A incident reports and arrest reports on file in the Records Bureau for the St. Thomas District.<sup>50</sup> We also began

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<sup>47</sup> VIPD April 2010 Status Report at 5.

<sup>48</sup> *Id.* at 4. The only Zone in which these computer terminals have not yet been installed is Zone C in the St. Thomas District, the offices for which will be relocated to a new building in the near future.

<sup>49</sup> *Id.*

<sup>50</sup> VIPD advised us that its standard operating procedure requires that all Form 1-A incident reports and arrest reports be filed with the central Records Bureau for each District. It is unclear whether there is a consistent practice in

reviewing the Form 1-A incident reports and arrest reports on file in the St. Croix District, and that review will be completed in the coming quarter.

During our review of Form 1-A incident reports and arrest reports, we looked for evidence that officers likely used force in an encounter with a citizen. Such evidence includes (1) statements in the narrative of the incident or arrest report explicitly stating that force was used or the type of force that was used; (2) information in the narratives or standard fields of the forms reflecting that a suspect fled from police, resisted arrest, or otherwise likely had to be subdued with some level of force by the involved officer; and (3) information suggesting that the suspect or an officer was injured during the incident. We then classified the type of force that appeared to have been used under one of the following seven categories: (1) hand controls or forcible handcuffing, (2) take down or hand strikes, (3) OC spray, (4) baton or ASP, (5) Taser, (6) pointing of a firearm, and (7) discharge of a firearm.<sup>51</sup>

Our review of Form 1-A incident reports and arrest reports on file in the Records Bureau for the St. Thomas District for the six-month period of July 1 through December 31, 2009 identified a total of only 36 confirmed or probable use of force incidents.<sup>52</sup> The chart below describes these 36 use of force incidents by the type of force that the involved officers appear likely to have used.

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**Footnote continued from previous page**

both Districts requiring supplements to initial Form 1-A incident reports, which reflect subsequent activity in investigations, to be routed to the central Records Bureau. Therefore, it is possible that Form 1-A incident reports or investigative supplements are maintained outside of the Records Bureau and may contain information indicating possible uses of force. This is an issue that the OIM will continue to pursue in the coming quarter.

<sup>51</sup> In many of the cases we reviewed, the Form 1-A incident reports and arrest reports do not clearly establish the types of force that were used by VIPD officers although, based on the information in the reports, we inferred that some level of force likely was used. We classified the cases according to the minimum level of force that was consistent with the reports' information regarding facts and circumstances of the underlying incidents.

<sup>52</sup> A single Form 1-A incident report or arrest report might indicate more than one use of force. For example, an incident report might indicate that an officer pointed his or her firearm while other officers took down or otherwise forcibly subdued the suspect.

**Uses of Force by VIPD Officers in the St. Thomas District  
July 2009 – December 2009**

Type of Force Used	Number of Incidents
Forcible handcuffing/hand controls	14
Take down/hand strikes	9
OC spray	1
Baton/ASP	0
Taser <sup>53</sup>	4
Pointing of firearm	7
Discharge of firearm	1

As we have discussed with VIPD and DOJ, we believe that these statistics significantly underrepresent the actual number of uses of force by VIPD officers in the St. Thomas District during the six-month time period we reviewed. First, there are very likely to be instances in which VIPD officers used force but did not provide enough information in the Form 1-A incident report or arrest report for us to be able to identify the incident as involving force. Second, almost all of the reports we reviewed were prepared by patrol officers. We found very few reports prepared by investigators or members of special mission units, such as warrant squads, who are more likely than patrol officers to use force due to the nature of their assignments.<sup>54</sup> Finally, as discussed above, there might be additional locations for incident reports that we have not yet discovered, such as files containing supplemental incident reports or investigation reports, and that are maintained separately from the Record Bureau's central files.

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<sup>53</sup> By order of the Commissioner, as of November 18, 2009, VIPD suspended the use of Tasers. See Commissioner's Directive #1118-09 re "Temporary Suspension of Taser Use" (Nov. 18, 2009). All four of the uses of force during the last half of 2009 that we identified as involving the use of a Taser occurred prior to the issuance of this directive.

<sup>54</sup> We found no incident or arrest reports indicating bites by a canine. During the coming quarter, we will request and review records relating to uses of force by canine units. Although VIPD's canine policies and program are not separately addressed in the Consent Decree, VIPD is required to record all use of force incidents, including incidents involving canine units, and to calculate canine bite ratios. See CD ¶¶ 32, 60.b.

### c. Supervisor Review of Uses of Force

VIPD reports that it has incorporated the Consent Decree's requirements relating to supervisors' review and evaluation of uses of force into the draft Use of Force Policy and Reporting Use of Force Policy. The draft interim use of force reporting Directive also refers to the requirement that supervisors conduct reviews of every use of force.<sup>55</sup> VIPD acknowledges that it has not yet developed a training program for supervisors regarding conducting use of force investigations.<sup>56</sup> Finally, VIPD reports that, in early March 2010, the Director of IAB, the Compliance Coordinator, and other VIPD personnel met with members of MPD's Force Investigations Team ("FIT") to gather information relating to use of force investigations. VIPD intends to incorporate information collected from FIT into its use of force policies.<sup>57</sup>

## 3. Recommendations

We recommend that VIPD issue the interim Directive regarding the reporting of uses of force as soon as possible so that it may begin holding commanders and supervisors accountable for ensuring that officers complete the Reporting Use of Force Forms after all use of force incidents. We recommend that VIPD promptly develop a system for the centralized collection, storage, and maintenance of Reporting Use of Force Forms and use of force reviews. We also recommend that VIPD immediately begin tracking the rates at which officers complete Reporting Use of Force Forms by District, Zone, and unit.

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

#### 1. Requirements

The Consent Decree requires 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;

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<sup>55</sup> VIPD April 2010 Status Report at 5.

<sup>56</sup> *Id.* at 5-6.

<sup>57</sup> *Id.* at 6-7.

- Establish a single, uniform system for reporting all firearm discharges;
- Prohibit officers from obtaining service ammunition from any source other than official VIPD channels;
- Specify the number of rounds VIPD officers are authorized to carry; and
- Require that all discharges of firearms by officers, whether on duty or off duty at the time of the discharge, are reported and investigated.

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

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

Finally, 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. 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.

## **2. Status and Assessment**

VIPD reports that a draft Use of Firearms Policy is being reviewed by the Policies and Procedures Committee.<sup>58</sup>

VIPD has not yet developed a policy regarding police action by off-duty officers.<sup>59</sup> Based on our discussions with VIPD supervisors and

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<sup>58</sup> VIPD April 2010 Status Report at 7.

<sup>59</sup> *Id.*

officers and monitoring of new recruit training, it appears that, in the absence of a written policy, some VIPD personnel have questions and are confused about the circumstances in which officers are permitted to take police action while off duty.

Finally, prior to the start of our monitoring, VIPD selected Tasers as an intermediate force device. VIPD purchased Tasers, and some officers were issued Tasers and received some training in their use. As discussed above, on October 14, 2009, DOJ advised VIPD that its draft Utilization of the Taser Policy was “critically inadequate and inconsistent with accepted practices.” DOJ told VIPD that the policy “should not be used by the VIPD until it is revised extensively.”<sup>60</sup> In response to this guidance from DOJ, on November 18, 2009, the Police Commissioner issued Commissioner’s Directive 1118-09 announcing that “effective immediately, during this period of policy and training review relative to taser use, all Taser usage by VIPD Officers shall immediately cease and all Officers with Department issued tasers shall surrender same to the Training Academy in their respective Districts no later than Monday, November 23, 2009.”<sup>61</sup> VIPD has not yet completed revisions to its Utilization of the Taser Policy, and VIPD officers currently are not authorized to carry or use Tasers.

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

#### **A. Public Information (CD ¶¶ 42-43)**

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

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

- VIPD must develop and distribute complaint forms, fact sheets, informational posters, and public service announcements that describe its citizen complaint process.

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<sup>60</sup> Letter from Je Yon Jung to Fred Handleman, Esq. re “United States v. Virgin Islands, et al.” (Oct. 14, 2009), at 2

<sup>61</sup> Commissioner’s Directive re “Temporary Suspension of Taser Use” (Nov. 18, 2009 (emphasis in original)).

- VIPD must make complaint forms and informational materials available at government facilities, including VIPD stations, substations, mobile substations and libraries. These forms and materials also must be available on the Internet and, upon request, with community groups and at community centers.
- Each VIPD station, substation, and mobile substation must permanently post a placard that describes the complaint process and includes relevant contact information, including telephone numbers. These placards must be displayed in English, Spanish, and, where necessary in light of the local community, in French or French Patois.
- VIPD officers are required to carry English, Spanish, and French or French Patois 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.

## **2. Status and Assessment**

During this first quarter, VIPD has made significant progress in developing a public information program regarding the citizen complaint process. VIPD has prepared a standard Citizen Complaint Form -- #2010 CCF-1 -- and printed 4,000 copies of the form.<sup>62</sup> VIPD reports that it has purchased lockable complaint form drop boxes to be placed in VIPD stations, substations, and mobile substations so that complainants have the option to place complaints in the drop boxes, in addition to submitting the complaint to a desk officer or directly to IAB. These drop boxes are intended to be accessible only by IAB.<sup>63</sup> VIPD also has developed a compliment/complaint informational brochure designed to inform members of the public about the complaint process and their right to make a complaint against VIPD officers, as well as to praise officers for outstanding work. An English language version of this

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<sup>62</sup> VIPD April 2010 Status Report at 8. During the meeting of the Policies and Procedures Committee meeting that we monitored this quarter, the OIM provided oral comments to the draft citizen complaint form.

<sup>63</sup> *Id.* at 8.

brochure has been printed in bulk, and VIPD reports that it has had the brochure translated into Spanish and French by a languages professor at the University of the Virgin Islands.<sup>64</sup>

VIPD reports that it has posted the compliment/complaint brochure on the Department's website ([www.vipd.gov.vi](http://www.vipd.gov.vi)). VIPD intends to display the brochures in every police facility accessible to the public and in other public areas, including libraries, community group facilities, and community centers. This quarter, VIPD purchased clear plastic brochure displays for that purpose.<sup>65</sup> VIPD also intends to display informational posters regarding the complaints process in VIPD facilities and other public buildings and reports that it plans to order a total of approximately 200 of these posters in English, Spanish, and French.<sup>66</sup> VIPD reports that it is in the process of establishing a toll-free complaint hotline through which members of the public will be able to contact IAB with complaints regarding VIPD officers.<sup>67</sup> Finally, VIPD's Public Information Office is in the process of creating a public service announcement campaign to inform the public about the citizen complaints process.<sup>68</sup> VIPD reports that it has targeted April 21, 2010 as the tentative date for introducing the initial phase of educating the public about the citizen complaints process.<sup>69</sup>

### 3. Recommendations

We recommend that VIPD prepare a formal, written plan for its public information program regarding the citizen complaints process. This plan should define each specific element of the public outreach program and include timelines and deadlines for each element and phase of the program. VIPD should hold personnel assigned to implementing the public outreach program accountable for meeting the timelines and deadlines set forth in the plan.

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<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> *Id.* at 8-9.

<sup>67</sup> *Id.* at 9.

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

**B. Means of Filing and Tracking of Complaints  
(CD ¶¶ 44-45)**

**1. Requirements**

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

- VIPD must be able to receive complaints filed in writing or orally, in person or by mail, and by telephone (or TDD), facsimile, or electronic mail.
- The duty officer at the front desk of each District station shall be authorized to take complaints, including third-party complaints. At the intake stage, an officer taking a complaint is permitted to describe facts that relate to a complainant's demeanor and physical conditions but may not express opinions regarding the complainant's mental competency or veracity.
- Upon receipt, VIPD is required to assign each complaint a unique identifier, which must be provided to the complainant.
- VIPD must track each complaint according to the type of misconduct alleged in the complaint -- e.g., excessive force, discourtesy, improper search, etc.
- Copies of all allegations of misconduct against a VIPD officer that are filed with the Zone Commands shall be referred to IAB within five business days.

**2. Status and Assessment**

VIPD reports that its revised citizen complaints process will be described in the Investigating Employee Misconduct Policy that currently is being reviewed by the Policies and Procedures Committee.<sup>70</sup> To provide officers with guidance regarding the complaints process while that policy is under development, VIPD has drafted a Processing Citizens Complaint Directive. On March 29, 2010, VIPD forwarded the draft Directive to OIM for review and comment as a request for technical

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<sup>70</sup> *Id.* at 9.

assistance.<sup>71</sup> The OIM will review the draft Directive and provide comments during the coming quarter.

In order to satisfy the Consent Decree's requirement that each complaint made by a member of the public be assigned a unique identifier that is provided to the complainant, VIPD is working with the Virgin Islands Territorial Emergency Management Agency ("VITEMA"), which currently operates the 911 computer-aided dispatch ("CAD") system for VIPD, to develop a CAD system for assigning unique identifiers to citizen complaints.<sup>72</sup> This quarter, we began monitoring and providing feedback to VIPD with respect to the development of the proposed CAD system for tracking citizen complaints. We will continue our monitoring in this area as the system's development continues during the coming quarter.

Finally, VIPD reports that its IAB has introduced new procedures relating to the tracking of citizen complaints, including directives requiring IAB investigators to regularly notify complainants of the status of IAB investigations, IAB supervisors to conduct monthly reviews of the files of pending investigations, and IAB investigators to complete daily activity logs, investigation planning worksheets, and case review forms.<sup>73</sup> We will monitor the implementation of these new procedures in both the St. Thomas and St. Croix Districts during the coming quarter.

### **3. Recommendations**

We recommend that VIPD continue working closely with VITEMA to develop and implement a system for assigning unique identifiers to each citizen complaint lodged with VIPD, regardless of the location or means by which the complaint is made. We recommend that VIPD prepare a detailed document that defines the requirements for the CAD system relating to citizen complaint intake and also prepare detailed, written procedures to guide VIPD and VITEMA personnel in using the system.

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<sup>71</sup> Email from Det. Eugene Alcendor to Tommy Beaudreau re "Draft Complaint Directive" (Mar. 29, 2010).

<sup>72</sup> VIPD April 2010 Status Report at 10. See IAB Directive #0001-10.

<sup>73</sup> *Id.* at 10-11.

### **C. 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 Virgin Islands and VIPD are required to develop and implement appropriate training regarding application of the preponderance of the evidence standard in internal investigations of allegations of officer misconduct.
- VIPD must explicitly prohibit an officer from being involved in the investigation of a complaint or incident if the officer used force during the underlying incident, was involved in conduct that led to the injury of a person during the incident, or authorized the conduct that led to the reported incident.
- VIPD must investigate every citizen complaint, and the resolution of each complaint shall be documented in writing.
- VIPD must develop a clear policy and procedure regarding the intake of complaints, including anonymous and confidential complaints, against VIPD officers.
- The Department must implement a centralized system for numbering and tracking all complaints.
- IAB is responsible for determining whether each individual investigation of a complaint will be assigned to a Zone, retained by IAB, or referred for possible criminal investigation.
- If IAB refers a complaint to one of the Zones for investigation, the Zone must immediately forward to IAB copies of all documents, findings, and recommendations so that IAB is able to track and monitor the investigation.
- The Commissioner must be notified of all complaints alleging excessive force or violation of a person's Constitutional rights within twenty-four hours of VIPD's receipt of the complaint.

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 evidence standard. VIPD also must train all officers who perform internal investigations on these issues.
- Require that VIPD investigators ensure that all officers present at the scene of the underlying incident provide a statement and that all interviews be recorded on audio or video.
- Require that investigation findings include conclusions regarding whether:
  - the police action was in compliance with policy, training, and legal standards, regardless of whether the complainant suffered harm;
  - the incident involved misconduct by any officer;
  - the use of different tactics could have, or should have, been employed;
  - the underlying incident indicates a need for additional training, counseling, or other non-disciplinary corrective measures; and
  - the incident suggests that VIPD should revise its policy, training, or tactics.
- Establish that each allegation investigated must be resolved by a finding of either “unfounded,” “sustained,” “not sustained,” or “exonerated.”<sup>74</sup>

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<sup>74</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

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

VIPD must keep complainants periodically informed of the status of the investigation of their complaints. Upon the completion of each investigation, VIPD must notify the complainant of the outcome of the investigation, including an appropriate statement regarding whether any

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**Footnote continued from previous page**

alleged conduct occurred but that the conduct did not violate VIPD policies, procedures, or training. Each of these findings must be based on a preponderance of the evidence. CD ¶ 57.

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.

## 2. Status and Assessment

As discussed above, VIPD has not yet completed its revised Investigating Employee Misconduct Policy, which is currently being reviewed by the Policies and Procedures Committee.

This quarter, we began reviewing IAB and Zone misconduct investigations conducted in the St. Thomas and St. Croix Districts during 2009. The purpose of this review was to develop information about the quality, completeness, and timeliness of VIPD's internal investigations of allegations of officer and employee misconduct.

In connection with our review, we identified approximately 74 citizen and command complaints on record with IAB for the St. Thomas District for 2009. We reviewed the investigation files related to 61 of these cases. These 61 cases were comprised of 18 citizen complaint investigations conducted by IAB, 37 citizen complaints referred by IAB to the Zones for investigation, and 6 command complaints conducted by IAB. We also reviewed a total of 22 misconduct investigations conducted by IAB in the St. Croix District during 2009, including 14 citizen complaint investigations, 6 command complaints, and 2 special complaints.

Our review of VIPD's misconduct investigations revealed several significant issues relating to the investigations conducted by IAB, including the following:

- Absence of final reports. We found that IAB investigation files frequently do not contain a written final report summarizing the evidence and stating the investigator's findings.<sup>75</sup> For example, 7 of the 18 IAB investigations of citizen complaints in the

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<sup>75</sup> See CD ¶ 52.

St. Thomas District that we reviewed did not contain a final report, even though IAB had designated the investigations as closed. It appears that, in investigations that result in findings that the subject officer engaged in misconduct, IAB investigators routinely do not prepare a final investigation report. Instead, it appears that the charging letter prepared by the investigator constitutes the final report. IAB should adopt a procedure that ensures each investigation culminates in an actual final report that contains all of the elements required under the Consent Decree.

- Failure to include one of the required findings. Our review found that none of the 32 citizen complaint IAB investigations that we reviewed in the St. Thomas and St. Croix Districts contained one of the findings required under the Consent Decree -- sustained, not sustained, exonerated, or unfounded. We found that IAB investigators typically describe their findings without specifically assigning one of the findings required under the Consent Decree. Although the required findings may be implicit in the investigators' descriptions of their findings, investigators should make explicit, final conclusions in accordance with the requirements of the Consent Decree. Moreover, once the Department's RMS is implemented, it will be important to the proper functioning of the system that one of the four required findings is entered into RMS as to each internal investigation conducted by VIPD.
- Untimely investigations. VIPD misconduct investigations are subject to provisions in VIPD's collective bargaining agreements that generally require that VIPD institute disciplinary action related to findings of misconduct within 50 days of VIPD's receipt of notice of the allegations. This time limitation poses a significant issue for the timely completion of IAB and Zone investigations.<sup>76</sup> For example, 10 of the 18 St. Thomas IAB citizen complaint cases that we reviewed were not completed within the 50-day period, and 3 of these cases contained no documentation reflecting that the investigator requested a

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<sup>76</sup> VIPD reports that, during recent collective bargaining agreement negotiations with the LESU, it unsuccessfully attempted to negotiate an extension of the 50-day limitation to 90 days. VIPD April 2010 Status Report at 21.

stay.<sup>77</sup> The file in one of these cases reflected that the IAB investigator made several attempts to obtain a disciplinary hearing date within the 50-day period, which was not done. Therefore, it appears that it may not be possible for VIPD to impose discipline in the case within the required time period.

- General completeness and sufficiency. We evaluated each of the closed misconduct investigations we reviewed as to whether the investigation was “complete” and “sufficient.”<sup>78</sup>
  - Of the 18 St. Thomas District IAB citizen complaint investigations we reviewed, we rated only 3 as both complete and sufficient. We found that 6 of these cases were sufficient, but not complete. Therefore, we rated a total of 9 (50%) of these cases as neither complete nor sufficient. The most common problem in those investigations that we rated neither complete nor sufficient was the investigators’ failure to address all relevant conduct by the subject officer.<sup>79</sup>
  - Only 4 of the St. Croix District IAB citizen complaint investigations that we have reviewed were finished by the investigator. Of these 4 finished cases, we found that three were both complete and sufficient. However, 4 cases is obviously a limited sample size and is insufficient for us to draw any conclusions yet as to the general quality of IAB investigations conducted in the St. Croix District.

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<sup>77</sup> The expiration of this 50-day period may be tolled under certain circumstances. VIPD, however, has not yet established clear guidelines regarding the circumstances under which such a stay may be sought or granted.

<sup>78</sup> We rated an investigation “complete” if it reflected the performance of all of the substantive investigative steps and contained all of the documentation required both by the Consent Decree and by generally accepted police practices. We rated an investigation “sufficient” if the evidence and analysis reflected in the investigation file were adequate to support a reasonable and defensible conclusion, even in cases where certain investigative procedures or analyses had not been completed.

<sup>79</sup> See CD ¶ 55. While we identified some deficiencies in most of the IAB investigations we reviewed, IAB investigators do satisfy certain requirements of the Consent Decree in their conduct of investigations. For example, based on the limited number of IAB investigations we have reviewed so far, VIPD investigators appear to routinely record witness statements. See CD ¶ 51.

- Finally, we found that the Zones frequently fail to report back to IAB regarding the status and findings of misconduct cases assigned to the Zones to investigate by the chain of command. Of the 37 cases from 2009 that we identified as having been referred to the Zones by IAB for the St. Thomas District, IAB records reflect that the Zones reported back in only 9 of those cases. We found that none of these 9 Zone investigations were complete or sufficient and that 2 of them failed to reflect that any substantive investigative work at all had been performed.

To help VIPD improve the quality and consistency of its internal misconduct investigations and with the permission of MPD, we provided the Director of IAB with model investigation checklists and templates developed by MPD.<sup>80</sup> This quarter, we also had several discussions with the Director of IAB and the Compliance Coordinator regarding the development of investigation timelines and other techniques to expedite and track misconduct investigations. We also suggested that VIPD develop guidelines for obtaining stays of investigations under defined circumstances in order to prevent disciplinary cases from running afoul of the 50-day limitation period in VIPD's collective bargaining agreements.

### **3. Recommendations**

We recommend that VIPD promptly customize the model investigation templates and checklists that we provided and implement their use by IAB and Zone misconduct investigators. In our experience, use of templates and checklists dramatically improves both the quality and consistency of internal investigations by providing investigators with easy-to-follow guidance regarding the specific investigative procedures they must follow and the documentation they must develop during their investigations.

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<sup>80</sup> Email from Tommy Beaudreau re "CoC Investigations Templates" (Jan. 27, 2010). Prior to our monitoring, an IAB supervisor in the St. Croix District independently developed an investigation checklist. It does not appear, however, that the checklist had been used in any of the St. Croix District's IAB investigations that we have reviewed so far.

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

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

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

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

- All uses of force;
- Canine bite ratios;<sup>81</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;

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<sup>81</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.

- 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).

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>82</sup>

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

- Provisions regarding data storage, data retrieval, data analysis, pattern identification, supervisory assessment, supervisory intervention, documentation, and audit;
- Requirements that the automated system be able to analyze data according to the following criteria:
  - The number of incidents for each data category by individual officer and by all officers in a unit;
  - The average level of activity for each data category by individual officer and by all officers in a unit; and
  - The identification of patterns of activity for each data category by individual officer and by all officers in a unit.

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<sup>82</sup> See CD ¶ 66.

- Requirements relating to the generation of reports on a monthly basis that describe data contained in the RMS and identify patterns of conduct by individual officers and units;
- Requirements that VIPD Deputy Chiefs, managers, and supervisors initiate appropriate interventions with individual officers, supervisors, and units based on activity and pattern assessments derived from the information contained in the RMS and that VIPD have the following intervention options available:
  - Discussions among Deputy Chiefs, managers, supervisors, and officers;
  - Counseling;
  - Training; and
  - 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), VIPD must prepare, for DOJ's review and approval, a Data Input Plan for including appropriate fields and values for new and historical data entered into the RMS.

- The Data Input Plan must identify the data to be included in the RMS and the means for inputting the data, the specific fields of information to be included in the RMS, the historical time periods for which information will be inputted into the system, deadlines for inputting data, and the persons responsible for the input of data.
- The Data Input Plan must provide for the input of historical data that is up to date and complete into the RMS.
- Once the RMS is operational, VIPD is required to enter information into the RMS in a timely, accurate, and complete manner and to maintain the RMS data in a secure and confidential manner.

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

The Consent Decree requires 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, 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. VIPD is required to submit all such proposals to DOJ for review and approval prior to implementing the proposed changes.

## 2. Status and Assessment

VIPD has purchased IPro risk management software from CI Technologies as the Department's off-the-shelf solution to meeting the Consent Decree's requirements relating to the development of an RMS. IPro software is used by many police agencies in jurisdictions across the United States. VIPD reports that the IPro RMS software was installed on a VIPD server in March 2010. In connection with implementation of the RMS in both Districts, VIPD has ordered two new servers on which to install IPro. One of the new servers will be installed in each District, and the servers will back up each other as a measure of emergency preparedness.<sup>83</sup>

VIPD also reports that, in late March 2010, a representative from IPro conducted training on the use of the software for IAB agents in both Districts. This training covered basic operations of the IPro software, as well as the entry of information related to citizen complaints.<sup>84</sup> VIPD reports that it has designated a senior IAB agent to serve as the RMS coordinator responsible for coordinating the implementation of the IPro RMS.<sup>85</sup>

VIPD has not yet completed development of an RMS protocol, which must be submitted to DOJ for review and approval.<sup>86</sup> VIPD also has not completed the required RMS Data Input Plan.<sup>87</sup>

### B. Oversight (CD ¶ 69)

#### 1. Requirements

The Consent Decree requires VIPD to develop a protocol for conducting audits within the RMS, which must be followed by VIPD

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<sup>83</sup> VIPD April 2010 Status Report at 15.

<sup>84</sup> *Id.* at 16. VIPD provided the OIM with an outline of the training provided by IPro. See Email from Det. Eugene Alcendor to Tommy Beaudreau re "VIPD Monitoring Schedule" (Feb. 8, 2010).

<sup>85</sup> VIPD April 2010 Status Report at 16.

<sup>86</sup> See CD ¶ 63. The Consent Decree requires that VIPD submit the RMS protocol to DOJ within 120 days (four months) of the effective date of the Consent Decree. Obviously, VIPD did not meet that deadline.

<sup>87</sup> See CD ¶ 62. The Consent Decree requires that the Data Input Plan be completed within 120 days of implementation of the RMS, which has not yet occurred.

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.

## **2. Status and Assessment**

VIPD has not yet prepared an audit protocol for the RMS.

### **C. Discipline (CD ¶¶ 70-72)**

#### **1. Requirements**

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. 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 VIPD with the discretion to impose any appropriate punishment when VIPD believes an officer's misconduct reflects a lack of fitness for duty.

- Absent exceptional circumstances, 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, VIPD is required to also consider whether non-disciplinary corrective action is necessary.

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 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.

## **2. Status and Assessment**

VIPD has not yet developed a revised disciplinary matrix, as required by paragraph 70 of the Consent Decree. As a form of technical assistance, the OIM provided the Director of IAB with a model

disciplinary matrix as a reference to use in the development of VIPD's matrix.

This quarter, we monitored two disciplinary board hearings presided over by a Deputy Chief. Our overall observation from these hearings is that VIPD personnel, including, in particular, supervisors and IAB agents who participate in the hearings, would benefit from training regarding the disciplinary process and the presentation of evidence in the hearings.

**V. Training (CD ¶¶ 73-81)**

**A. Management Oversight (CD ¶¶ 73-77)**

**1. Requirements**

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

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

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

- Ensuring the quality of all use of force training;
- Developing and implementing use of force training curricula;
- Selecting and training VIPD officer instructors;

- Developing, implementing, approving, and overseeing all in-service training;
- In conjunction with the District Chiefs, developing, implementing, approving, and overseeing a protocol for patrol division roll calls that is designed to effectively inform officers of relevant changes in 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.

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

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

## **2. Status and Assessment**

VIPD acknowledges that its Training Director, who was hired by VIPD last year, has not yet developed a plan for reviewing the Department's use of force-related training program and curricula, conducting regular training needs assessments, and meeting the other requirements of paragraphs 73 through 75 of the Consent Decree.<sup>88</sup> VIPD also acknowledges that the Training Division currently does not maintain a central repository for lesson plans and other training materials.<sup>89</sup>

This quarter, we began reviewing in-service and instructor training records for personnel in the St. Thomas and St. Croix Districts. Although this review is ongoing, our initial observation is that in-service

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<sup>88</sup> VIPD April 2010 Status Report at 21-22.

<sup>89</sup> *Id.* at 22-23.

training for VIPD officers, including in-service training related to the use of force, has been infrequent and irregular. For example, the training records we reviewed demonstrate that, between 2006 and 2009, there have only been three opportunities in the St. Thomas District for firearms qualification -- one each year, except for 2008 when no opportunity for firearms qualification was offered. Our review of a sample of the training files for VIPD instructors in the St. Croix District found that the files appeared to be incomplete and that instructor certifications in disciplines such as the use of OC spray and ASP/baton in many instances were not current.

### **3. Recommendations**

Although the completion of specific use of force lesson plans and other elements of the development of VIPD's use of force program may depend on the completion and approval of VIPD's use of force policies, there is significant compliance-related work in which the Training Academy currently could be engaged concerning evaluating existing training programs, developing training needs assessments, and researching contemporary training techniques and formats. We strongly encourage the Training Director and staff of the Training Division to develop plans for the development and implementation of an updated use of force training program, including in-service training and weapons certification programs for all VIPD officers.

#### **B. Curriculum (CD ¶¶ 78-81)**

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

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

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

- VIPD's use of force model;
- Proper use of force decision-making;

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

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

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

Finally, 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.

## **2. Status and Assessment**

VIPD acknowledges that it has not yet conducted a review of its use of force training, as required under paragraph 78 of the Consent

Decree, because it has not yet obtained approval for its revised Use of Force Policy.<sup>90</sup>

This quarter, we monitored several use of force-related training sessions, including new recruit use of force and baton training and in-service training of supervisors regarding the requirements of the Consent Decree, use of OC spray, and use of the baton.

- New recruit use of force training. Because the revised Use of Force Policy is still being developed, this training was based on the VIPD's existing policy and course materials, all of which are out of date. While the instructor had a good demeanor and the class was interactive, there was relatively little emphasis on the use of force continuum, threat assessment, and decision-making regarding the appropriate level of force, perhaps because the policy has not been established. Currently, there is no formal lesson plan for use of force training, and this lack of a lesson plan contributed to confusion among the recruits about the Department's requirements related to, among other things, use of force reporting and use of force by off-duty officers.
- New recruit baton training. This training involved instruction on techniques for drawing the baton and basic strikes. We found that the instructor was very knowledgeable, had an excellent presence with the class, and provided appropriate information about safety and prohibited strikes. However, the class size of approximately 22 recruits was too large for a single instructor to be able to provide individualized instruction to each of the recruits. The instructor acknowledged this problem and told us that he had difficulty getting other instructors to appear for training but that he expected more instructor support during the afternoon sessions.
- Supervisor OC spray and baton refresher courses. We found that the OC spray and ASP baton training sessions generally were well done and delivered appropriate information about accepted police practices with those tools. The instructor was well informed and knowledgeable, and he covered both appropriate use of the tools and the requirements for reporting when the tools are used. While the classes were interactive and included active participation from the attendees, they were

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<sup>90</sup> *Id.* at 23.

entirely lecture based. Therefore, there was no direct, individual instruction regarding each supervisor's ability to appropriately deploy, use, and supervise the use of the devices.

- Supervisor training regarding the Consent Decree. We also monitored supervisor training regarding the Consent Decree, which was delivered by the Compliance Coordinator. The instructor was very well prepared and used a detailed PowerPoint presentation that thoroughly covered the Consent Decree's requirements. The instructor also discussed the history behind the Consent Decree, including the DOJ investigation and Technical Assistance Letter. We monitored a separate supervisor training session led by the Director of IAB that covered the requirements of the Consent Decree and supervisors' roles in processing citizen complaints.

Finally, we made the general observation that VIPD instructors should exercise tighter control over sign-in procedures and that greater care needs to be devoted to maintaining records reflecting training attendance. For example, instructors should be required to prepare a separate, labeled sign-in sheet for each training session and to ensure that the sign-in sheet accurately reflects attendance at the training.

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

### **1. Requirements**

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

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

In addition to fulfilling these functions, 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 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 (five months) after the March 23, 2009 effective date of the Consent Decree.

## **2. Status and Assessment**

VIPD has appointed a Compliance Coordinator who is competent, responsive, organized, and very familiar with the history and requirements of the Consent Decree. However, as we have expressed during our monthly meetings with the Parties, the Compliance Coordinator faces significant challenges due to the workload created by the breadth of the reforms required under the Consent Decree and the logistics of coordinating compliance efforts and monitoring activities in the Virgin Islands. Therefore, we have strongly recommended that the Commissioner devote additional staffing resources to the Consent Decree compliance effort, including, at the minimum, a compliance coordination staff person for the St. Croix District.<sup>91</sup> The Commissioner has advised us that he is in the process of identifying, funding, and assigning such a person but acknowledges that the process has been slow.

VIPD submitted its fourth Status Report to DOJ, the Attorney General's Office, and the OIM on April 6, 2010.<sup>92</sup> We found VIPD's report to be very helpful in preparing this quarterly report. In the next quarter, we will provide recommendations to VIPD regarding ways to improve the level of detail and documentation reflected in the status reports.

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<sup>91</sup> The current Compliance Coordinator is resident on St. Thomas.

<sup>92</sup> Paragraph 98 of the Consent Decree requires VIPD to submit status reports every 90 days from the effective date of the Consent Decree. At our request, the Parties agreed during the March 2010 monthly meeting to modify the timing for the submission of the status reports so that they are now due by the seventh of the month following the end of a quarter.



## Conclusion

**B**ased on our monitoring during this first quarter, we believe that the leadership of VIPD -- including the Police Commissioner, District Chiefs and Deputy Chiefs, and key Directors -- is committed to implementing the Consent Decree's reforms and effecting genuine improvements in the Department's use of force-related programs. As reflected in this report, however, VIPD has gotten off to a slow start. Many of the obsolete policies and unsatisfactory conditions described in the DOJ Technical Assistance Letter from October 2005 remain unchanged more than a year after entry of the Consent Decree.

If VIPD is to accomplish its stated goals of fully implementing the large number of reforms required under the Consent Decree and bringing about early termination of the Consent Decree, compliance must become one of the highest priorities of the Department. VIPD must find ways to expedite the process of drafting and obtaining approval for the policy revisions required under the Consent Decree, developing training curricula and lesson plans and ensuring that all officers receive regular and appropriate training, creating an efficient and thorough regime for receiving and investigating allegations of excessive force and other misconduct, and establishing an effective personnel management and supervision infrastructure. All of these reforms present major challenges and, we fully appreciate, will take some time to implement. However, if substantial compliance with the Consent Decree is to be achieved, VIPD must translate its willingness to reform into measurable progress under the Consent Decree in the coming months and quarters.



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May 7, 2010

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## **Appendix A (Acronyms)**

CAD	computer-aided dispatch
CD	Consent Decree
DOJ	Department of Justice
FIT	Force Investigation Team
IAB	Internal Affairs Bureau
IACP	International Association of Chiefs of Police
LESU	Law Enforcement Supervisors' Union
MPD	District of Columbia Metropolitan Police Department
OC	oleoresin capsicum
OIM	Office of the Independent Monitor
PBA	Police Benevolent Association
PwC	PricewaterhouseCoopers LLP
RFP	Request for Proposals
RMS	Risk Management System
VIPD	Virgin Islands Police Department
VITEMA	Virgin Islands Territorial Emergency Management Agency