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Police Assessment Resource Center

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**Response to N-CAP Questions Regarding Community Engagement
by the
Proposed Police Assessment Resource Center (PARC) Monitoring Team**

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**RESPONSE TO N-CAP QUESTIONS REGARDING COMMUNITY ENGAGEMENT
BY THE PROPOSED
POLICE ASSESSMENT RESOURCE CENTER (PARC) MONITORING TEAM**

1. Overcoming the Biggest Challenges to Successful Community Engagement

The questions posed by N-CAP go to the very heart of the consent decree process involving the Newark Police Department (“NPD”). In our formal application, the proposed Police Assessment Resource Center (“PARC”) Monitoring Team (the “Team” or “Monitoring Team”) stated its core belief that “the bedrock of any consent decree is a strengthened, responsive relationship between the city’s diverse communities and its police department.”¹

In the communities where PARC has worked previously, we have heard from individuals that the weights and burdens of law enforcement are not equally shared – while the benefits of public safety are likewise not equally distributed. We have heard the same as we have begun, since late January, talking with people in the Newark community.

That is, regardless of social or economic status, many black, Latino, and other minority communities believe that criminal justice is not administered fairly, that they are victimized by the criminal justice system, and that law enforcement provides inadequate protection for them and their families. These perceptions have appeared most acute to us in our work in large, urban cities, but they are by no means confined to places like Newark.

Newark has a long, more than 50-year history of concerns about police accountability and of distrust between many of its communities and the Newark Police Department. The proposed PARC Monitoring Team understands that – despite a number of reform programs, accountability proposals, and police-community partnerships having come and gone in the last several decades – a sense exists in a number of Newark’s diverse communities that nothing can truly change the NPD. When issues of police misconduct are resolved by a process that lacks transparency and accountability, it solidifies the sense of hopelessness and that change is impossible – creating the volatile social conditions that erupted in Newark in 1967 and that still exist in many parts of the country today.

The biggest challenge to successful community engagement, then, will be to overcome what amounts in many communities to generations of distrust and hopelessness. Three basic objectives will need to be met:

¹ Police Assessment Resource Center, Application to Serve as Court Monitor of the Newark Police Department (Feb. 13, 2015) [*hereinafter* “Application”] at 1.

- The Newark Police Department must become a part of a community-based communications network to be continually informed of the needs and concerns of every neighborhood in the city.
- The citizens of the city must become convinced by sustained experience that the Newark Police Department is prepared to deal with them as individuals, treating them respectfully and equitably during encounters and responding empathetically to their needs. At the same time, the police must receive information and support from the community it serves.
- The public must become convinced that instances of potential police misconduct are being thoroughly and impartially investigated and resolved fairly in a system that is ultimately accountable to the public.

A primary way that the PARC Team will attempt to reset the police-community relationship is by having several, locally-based team members present on the ground in Newark on an ongoing basis through the consent decree process.

The project will be coordinated on a day-to-day basis by Matthew Barge, Vice President & Deputy Director of PARC. He has served as the primary, day-to-day director for a team that has monitored a DOJ consent decree addressing excessive force and discriminatory policing concerns in Seattle. He has directed numerous monitoring and independent assessment projects for departments across the country. He is a recognized expert in use of force policies, police data systems, documentation of stops and detentions, and bias-free policing. Mr. Barge is based in PARC's New York office, and his presence in Newark will be significant and ongoing throughout the course of the decree at a permanent office within the Newark community.

PARC hand-picked two locally-based team members to have primary responsibility on addressing police-community relationship and community policing concerns.

- Edwin Stier is the Former Chief of the Criminal Division of the New Jersey U.S. Attorney's Office and Director of the New Jersey Division of Criminal Justice. As Criminal Justice Director, Mr. Stier oversaw the New Jersey Police Training Commission and developed performance standards for police departments throughout the state.

A graduate of Rutgers and Rutgers School of Law (Newark), Mr. Stier has previously been charged with taking on major institutional corruption. In 1987, Mr. Stier became the court appointed trustee for one of the nation's most corrupt and violent labor organizations, Teamsters Local 560. After 12 years, the U.S. District found that the culture of the union had been completely reformed and released it from trusteeship.

Mr. Stier has a long history of civic and social investment in Newark. In the early 1990s, Mr. Stier served in Newark as the Chairman of Newark Fighting Back, a program funded by the Robert Wood Johnson Foundation to devise a strategy to reduce the demand for drugs and alcohol in urban America. Among the elements designed by Fighting Back in its strategy of “social capacity building” was a unique form of community policing that proved to be highly successful during the experimental phase of the program.

- Dr. Rod Brunson is the Vice Dean of Academic Affairs, Program Director, and Associate Professor in the School of Criminal Justice at Rutgers University (Newark).

Dr. Brunson is a national authority on police-community interactions. He has concentrated his research and written extensively on police/community interactions and the relationship between law enforcement strategies, procedural justice and community trust. The recipient of numerous awards for excellence in his scholarship, he is a recognized expert in qualitative research methods, police/citizen relations and youth violence.

PARC does not believe that monitoring is an impassive exercise. Instead, the Team will have an ongoing, on-the-ground presence in Newark and work, from day one, to ensure that the consent decree becomes the comprehensive reset of the police-community relationship that it must be.

2. Plan to Ensure Permanent Integration of Community Participation in Policy- and Decision-Making of NPD

Ensuring permanent integration of community participation starts with building an open, close working relationship between the Monitoring Team and the social infrastructure of the city through its community based organizations.

There are two distinct relationships that the Team must have with those organizations. First, the team needs to develop an understanding of the most effective means of communication with the community on an ongoing basis. The Team will not limit those communications to periodic, formal reports. Instead, it will seek to create a dynamic process that continually builds mutual understanding.

Second, the Team must act as a facilitator of communications between the community and the police department. The extent to which those communications become direct (without an active role for the monitor), substantive and institutionalized, will be a major factor in determining the success of the monitorship.

Additionally, the Monitoring Team will work closely with all constituencies to develop metrics to which everyone subscribes to measure progress in achieving the goals of the consent decree. This should be another collaborative process. The Monitoring Team will certainly contribute its

experience in other jurisdictions and present what it believes are the best practices. Ultimately, however, the U.S. Department of Justice, Newark government officials, the NPD, and the community as a whole must become convinced that the metrics accurately reflect the extent of which the cultural changes necessitated by the consent decree actually are affecting people on a day-to-day basis.

The Team also believes that major community stakeholders, including N-CAP, need to be part of the agenda-setting, policy-drafting, training development, and systems refinement processes that will need to occur. This participation sets a precedent for the Newark Police Department to engage outsiders, including community stakeholders, in its day-to-day functions and in consideration of translating broad community concerns into specific actions, policies, and processes. This process has worked well in other DOJ consent decree jurisdictions, and it will be an important aspect of the Newark process.

3. Experience in Addressing Police-Community Relationships & How That Experience Informs Your Approach to Newark's Consent Decree

The Police Assessment Resource Center is a nonprofit organization dedicated to providing independent counsel to cities and law enforcement agencies on effective, respectful, and publicly accountable policing. Over fourteen years, PARC has developed a specific focus on working with communities throughout the country as an independent monitor or conducting independent assessments – either as a court-approved monitor pursuant to a U.S. Department of Justice consent decree or proactively, where a city or department has recognized with the community the need to bring cultural change to its police department.

PARC has experience in a number of areas that will inform the proposed Team's approach to the Newark decree. First, PARC's monitoring experience is unique. In assisting with the monitoring of a DOJ consent decree in Seattle, PARC has engaged in an ongoing, multidimensional community engagement effort.² It has worked closely with a Community Police Commission – a city body appointed by the Mayor that was created specifically by the consent decree itself – on department policies, training curricula, and assessments of the department's community policing initiatives.

Likewise, across 21 years of independently monitoring the Los Angeles County Sheriff's Department, the fourth-largest police department in the United States, PARC addressed issues like anti-gang strategies, the department's response to mentally ill subjects, and treatment of subjects in the County jails not just by running statistical tests or crunching numbers – but by talking to people across Los Angeles County about their real-world experiences.

PARC's expertise in monitoring led to it being awarded a major grant from the Bureau of Justice Administration to convene a group of peer experts and monitors in constructing National

² See Seattle Police Monitor, <http://www.seattlemonitor.com>.

Guidelines for Police Monitors.³ Those guidelines provide other monitors, civilian review boards, auditors, police commissions, and law enforcement agencies subject to other civilian oversight with first-of-its-kind, national recommendations for protocols, procedures, and ethics.

Second, PARC has focused specifically on the police-community relationship in a number of instances. For example, in Pasadena, California, PARC conducted one of the first published studies that contemporaneously surveyed both a community's thoughts about its police department and the views of police officers about themselves and the community.⁴ Subsequently, the COPS Office of the Department of Justice charged PARC with conducting the first major assessment of that city's police-community mediation program, which became a national model. Similarly, for a Native American tribe in the Southwest, PARC was charged with examining the practices of the tribal police force and how they might be transformed to improve the relationship between the police and members of the tribal community.

Finally, PARC is an authority on civilian oversight. Community organizations and cities routinely engage it to recommend a form of independent oversight or to help it establish such a body. For instance, when Eugene, Oregon was considering implementing a new civilian oversight body, it asked PARC to report on law enforcement oversight models used by cities across the United States.⁵ PARC pioneered a conceptual framework for police oversight models, which it has used to assist several other agencies, helping the city to tailor an accountability system to the community's needs. To this end, the Monitoring Team is well-versed in the issues and challenges that may face the Civilian Complaint Review Board as it works to establish itself as the vital mechanism of oversight and accountability that it must be.

These areas of PARC's expertise are supplemented by the individual experiences of the PARC Monitoring Team. Chief Joseph Brann was the founding director of the COPS Office. Chiefs Noble Wray and Timothy Longo have long histories and strong reputations in their communities for fair, transparent, and accountable policing. Kelli Evans has served as a federal court-appointed monitor of the Oakland Police Department and an associate director of the ACLU of Northern California. Robert Saltzman is a police commissioner on the LAPD Board of Police Commissioners, which reviews use of force, officer discipline, and other critical incidents while serving as the ongoing, civilian oversight of the department. Julio Thompson is the Assistant Attorney General for Vermont and Director of the Attorney General's Civil Rights Unit. Brian Center of PARC was centrally involved in the development and implementation of a comprehensive, community-based anti-gang strategy in South Los Angeles.

³ Police Assessment Resource Center, National Guidelines for Police Monitors (2009), <http://static1.squarespace.com/static/5498b74ce4b01fe317ef2575/t/54aff2f3e4b0233c1957492a/1420817139792/Monitoring+Guidelines.pdf>.

⁴ See Police Assessment Resource Center, Pasadena Police-Community Relations Assessment, <http://www.parc.info/pasadenapolicecommunity/>.

⁵ See Police Assessment Resource Center, Eugene, Oregon, <http://www.parc.info/eugene/>.

4. Educating Newarkers about Reform, Opportunities for Involvement in the Process, and Overcoming Community Skepticism & Distrust

Achieving fundamental cultural change in the interface between the police department and the citizens of Newark will not be easy. The process will have to overcome generations of distrust on both sides, fueled by countless grievances and deeply embedded frustration. Indeed, any monitoring team will have to encounter and address individuals within the Department who are comfortable and who have thrived in a police department that is not addressing the concerns and needs of the Newark community.

The consent decree fundamentally is aimed at establishing policies, procedures, training, and systems of critical self-analysis to ensure that accountability is woven into the fabric of a police department. The changes are deep, structural, and geared toward establishing transparent and objective systems – for addressing problem officers, investigating force incidents, holding officers responsible for misconduct – in which the public can have confidence. At the end of the consent decree, NPD will need to have the mechanisms in place so that it can self-manage the risk of unconstitutional policing.

Part of overcoming skepticism and distrust depends on NPD's willingness to fully embrace new approaches and processes – reforms that have worked in a number of other jurisdictions – and demonstrate to the public that it can critically evaluate its own officers and its own performance. This will take time. Reform is never easy – and it rarely proceeds in straight lines.

Well before these fundamental, significant reforms come online, however, “[c]ommunity engagement will be a top priority during the” very first phase of monitoring.⁶ The Team will meet with engaged community groups, hold a series of town hall listening sessions within the Newark community, and attempt to engage and reach into areas of the community less likely to be affiliated or attached to more traditional community organizations, including young black and Latino residents.

Our community engagement will be continuous and committed – meeting in an ongoing capacity with residents across Newark's wards and diverse communities, organizing community events to update residents and hear about how the police and reform are progressing, and holding regular forums in Newark neighborhoods. Whenever possible, we will work to partner with engaged community groups – whether formal organizations like the ACLU, informal groups like neighborhood watches or ward-based groups, to other social pillars like churches, schools, and youth organizations.

During the ongoing engagement progress, the Team will update the community on the current status of NPD's progress and detail and explain the motivations for the changes taking place – so that members of the Newark community can have the same understanding about how changes in policy, procedure, practice, training, or the like connect to the core concerns in the consent decree. The

⁶ Application at 21.

Team will also want to spend significant amounts of time hearing from the community about their ongoing experiences with NPD, their concerns or praise regarding the department, and the extent to which the implementation of the consent decree is being seen and felt on the streets and in the community on a day-to-day basis.⁷

5. Policy Changes Critical to End Racial Profiling & Other Civil Rights Violations

The Monitoring Team will need to gather a significant amount of additional information from stakeholders before being able to comment with specificity on the various policy changes that might be necessary. However, nearly every consent decree has required overhauls of many department policies, and a critical appraisal of how Newark’s policies on use of force, stops and detentions of civilian subjects, discriminatory policing, and others will be necessary.

As a general matter, officers benefit from clear, specific, and pragmatic guidelines on when they may use force in the field and what level of force is permissible in a given case.⁸ This is especially true when Court decisions directly situate the constitutionality of force in terms of “the facts and circumstances confronting” an officer in a given situation⁹ – and expressly disclaim the existence “a magical on/off switch that triggers rigid preconditions” that make some force appropriate and some inappropriate.¹⁰ Although general standards and balancing tests may be fair and workable for courts, officers in the real world and the communities that they serve need and deserve clear expectations and pragmatic rules for when force is justified.

Any use of force policy must balance concision with precision and broad applicability – all while ensuring officer safety and public safety. It must guide officers across innumerable unforeseen circumstances yet be specific enough to permit a department to hold officers accountable for using inferior tactics or poor decision-making.

For example, the DOJ-, Monitor-, and Court-approved officer use of force policy in Seattle requires that all officer force be necessary, reasonable, proportional to the danger or threat posed by the subject, and used when no reasonable alternatives to de-escalate were available. However, absent limited exceptional circumstances, it prohibits officers from using force on restrained or handcuffed subjects. That provision directly responds to the Department of Justice’s finding in its 2011 investigation that the Seattle Police Department had previously “engage[d] in a pattern or practice of using excessive force against individuals who are already under control” and who, consequently,

⁷ See *id.* at 28–29.

⁸ This discussion is excerpted from Written Testimony of Matthew Barge, “Policing Strategies for the 21st Century,” Committee on the Judiciary, United States House of Representatives (May 19, 2015), available at http://judiciary.house.gov/_cache/files/1312264b-eae3-471e-b39e-9ab5ae81148a/barge-testimony.pdf.

⁹ *Graham v. Connor*, 490 U.S. 387 (1989).

¹⁰ *Scott v. Harris*, 127 S.Ct. 1769, 1777 (2007).

under most circumstances “does not pose an immediate threat to the safety of the officer or the public.”¹¹

Thus, Seattle Police Department policy provides greater clarity on how to use force in particular circumstances based on the history of that particular department and concerns of the community that it serves. PARC has similarly assisted a number of other agencies in crafting specific use of force policies tailored to the concerns and histories of their own communities.

The Newark Police Department will have the same opportunity to set forth clear and specific policies on when force may be used that reflect the values of the community and organization and go further than the bare, often vague requirements of the courts in the area – and to doggedly insist on strict adherence to the policies as preconditions for continued employment with the department.

Similarly, in the areas of stops, detentions, and arrests, the Department will be able to set forth specific, real-world requirements to address the Department of Justice’s findings in the area. The Monitoring Team expects that a new policy and training on bias-free policing, implicit bias, procedural justice, and cross-cultural communication would be – among other topics – areas of reform or innovation that would need to be explored in the context of the consent decree.

Again, the PARC Monitoring Team will work closely with community stakeholders to ensure that changes in policy, training, procedures, and the like address the specific and particular ways that excessive force, discriminatory policing, and other issues impact Newark’s communities.

6. Role of Existing Community-Based Organizations & Accountability Work in Plans to Oversee NPD

PARC’s monitoring will not use a “cookie cutter” approach. What works for one community may not work for another. Every city faces unique challenges and enjoys distinct opportunities.

The proposed PARC Team is fully aware of the efforts of many organizations – both in the past and currently – in the areas of public safety, police accountability, and community policing. Accordingly, our monitoring will not replace or supplant approaches that have worked or promising innovations currently underway. Instead, we will seek to build upon and harness the momentum of those efforts that are making a tangible difference in Newark’s communities.

During our first phase of monitoring, the PARC Team will do nothing but seeking to establish strong, working relationships with major stakeholders.¹² As our application noted, “[m]indful that community organizations have focused on police accountability and advancing police reform over many different eras of Newark’s history,”¹³ these stakeholders must include existing public safety

¹¹ U.S. Dept. of Justice, Civil Rights Division and U.S. Atty’s Office, W.D. Wash. Investigation of Seattle Police Department at 14 (Dec. 16, 2011).

¹² Application at 21.

¹³ *Id.*

projects and accountability initiatives. This includes, crucially, the newly-created Civilian Complaint Review Board.

The proposed PARC Monitoring Team deeply appreciates the opportunity to discuss the primary importance of Newark's communities to the consent decree process. We welcome the opportunity to discuss these and other issues at any time. As a primary contact, N-CAP can be in touch with Matthew Barge at (202) 257-5111 or by email at matthewbarge@parc.info. We thank N-CAP again for the ability to share our perspective.