

# RESPONSE TO REQUEST FOR APPLICATIONS TO SERVE AS INDEPENDENT MONITOR OF THE FERGUSON POLICE DEPARTMENT

June 8, 2016



## A. Executive Summary

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A multi-disciplinary team comprised of: (1) former Inspector General of the U.S. Departments of State and Homeland Security and current partner in the law firm of Squire Patton Boggs (US) LLP Clark Ervin; (2) former Boston Police Commissioner Ed Davis; (3) a professor in the Department of Law, Police Science, and Criminal Justice Administration at John Jay College, City University of New York, who founded the Center on Race, Crime, and Justice there, Delores Jones-Brown; and (4) a former chief of the Appellate Section of the Department of Justice's ("DOJ") Criminal Division and former Assistant U. S. Attorney who presently heads Squire Patton Boggs' Government Investigations and White Collar practice group, is pleased to respond to the Request for Applications ("RFA") for the position of Independent Monitor ("Monitor") with respect to the April 19, 2016 Consent Decree between the U.S. and the City of Ferguson (the "Consent Decree").

As the Monitor and the leader of the monitoring team, Mr. Ervin would draw on his extensive auditing, inspecting, investigative, and monitoring experience as a federal Inspector General; his experience as Inspector General in monitoring the activities of his own law enforcement forces and those of the two federal agencies over which he exercised oversight; and as a Monitor for another U.S. government agency and as a member of monitoring teams for two other U.S. government agencies, one of which was DOJ.

Commissioner Davis would draw on his 35-year career in law enforcement, having served not only as the Commissioner of the Boston Police Department but also as the Superintendent of the Lowell Police Department. He is a nationally and internationally recognized expert in community policing and crisis management.

A former prosecutor, and contemporary legal scholar and consultant, Professor Jones-Brown has more than 30 years of experience in criminal justice practice, education, and research. Since 2008, she has been one of the leading analysts of policing strategies related to the delivery of police services in minority communities, including, but not limited to, the use of stop and frisk, order maintenance policing, and the use of force. She has worked extensively with in-service officers, community-based organizations, and public policy advocates, successfully using law, social science research, and an understanding of human dynamics to bridge divides across groups. In addition to multiple book chapters, articles, and legal commentaries, she is the author of *Race, Crime and Punishment*, and the co-editor of two additional books, *The System in Black and White: Exploring the Connections between Race, Crime and Justice*, and *Policing and Minority Communities: Bridging the Gap*. And, Professor Jones-Brown has a background in law enforcement training that spans three decades.

Mr. Rosenthal has more than 30 years of experience in federal litigation and white collar defense and appellate matters, and he has argued cases in every federal circuit court of appeals in the U.S. He also served as Associate Independent Counsel to the U.S. Senate.

We believe that, collectively, the team has all of the relevant experience and expertise to monitor the Ferguson Police Department's ("FPD") compliance with the terms of the Consent Decree. Mr. Ervin would bring to bear his record as an independent, aggressive, and objective evaluator of government agencies' performance and as a monitor of agencies' compliance with recommendations for reform and improvement. As a former law enforcement officer who rose from the ranks to head major police departments, Commissioner Davis would provide a law enforcement officer's appreciation for the daily challenges of street-level crime fighting, as well as an understanding of how to carry out an officer's duties in accordance with the law and in a manner conducive to a positive relationship with a racially and ethnically diverse community. As a social scientist and legal scholar with an extensive history of working collaboratively with police agencies, community groups, and public policy advocates, Professor Jones-Brown would provide the team with the best evidence-based and analytical thinking about how to reform police departments like FPD's. As a highly experienced federal trial and appellate lawyer, both inside government and as a private practitioner before DOJ and other U.S. government agencies, Mr. Rosenthal would provide the team with expertise in a number of areas that are specified in the RFA, including "assessing legal sufficiency and compliance with constitutional and other legal requirements," and "appearing in court as counsel."

## **B. Personnel and Current Time Commitments**

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### **The names of the individuals and/or subcontractor consultants who would comprise the team;**

The team would be headed by Clark Ervin as Monitor, and he would be assisted principally by Former Boston Police Commissioner Ed Davis; criminologist and legal scholar, Professor Delores Jones-Brown; and the head of Squire Patton Boggs' Government Investigations and White Collar practice group, Sam Rosenthal.

### **A summary of the relevant background of each team member;**

As noted above, Mr. Ervin served as the Inspector General of the U.S. Department of State (2001-2002), and, later, as the very first Inspector General of the U.S. Department of Homeland Security (2003-2004). As explained in more detail later, a key part of Inspectors General's work is making recommendations to the agencies they oversee for improvement and then monitoring those agencies' compliance with the recommendations they agree to implement. As a partner in the law firm of Squire Patton Boggs, Mr. Ervin has experience as a federal Monitor and as a member of federal monitoring teams. (Squire Patton Boggs is the 14th largest law firm in the world, with nearly 1600 lawyers in 44 offices in 21 countries on five continents spanning the globe.) Mr. Ervin's complete firm biography is at: <http://www.squirepattonboggs.com/professionals/e/ervin-clark-kent>.

Commissioner Davis has some 35 years of experience in the field of law enforcement. He served as the Police Commissioner of Boston from 2006-2013, and in that capacity he led a force of more than

2,000 sworn officers and some 600 civilian personnel. In this capacity, he administered a budget exceeding \$300 million in local, state, and federal funding. Commissioner Davis re-branded the Boston Police Department after successive years of crises that adversely affected citizens' perception of the police. This nationally recognized re-branding initiative stressed transparency and honesty among officers (the guiding principle was summarized as, "If you lie about a material fact, you can no longer be a police officer in Boston"), and it earned a public approval rating of 80%. The Commissioner also overhauled and enhanced the Internal Affairs unit. He deployed technology, like COMPSTAT, to enable data-driven decision making; led a predictive analytics software development project with MIT; and installed cameras, license plate readers, and electronic surveillance capabilities, as well as founded a nationally recognized social media project. During the Commissioner's tenure, crime was reduced by 30% over the course of seven consecutive years. This feat was accomplished by re-engineering the department from being "arrest-centric" to being "prevention focused." Commissioner Davis led hundreds of complex criminal investigations, including the Boston Marathon bombing, and other high-profile cases like the Rockefeller case, that of the Craigslist killer and the Boston Strangler, as well as political corruption cases and ones involving organized crime.

Prior to serving as Boston Police Commissioner, Commissioner Davis served, from 1994-2006, as the Superintendent of the police department in Lowell, Massachusetts. In that capacity, he led a force of 300 employees, sworn and civilian, and he reformed a dysfunctional police department awash in adverse civil liability judgments. The result was a reduction in crime (11 years of Part I crime reductions, in fact), and establishing a dialogue with minority communities that led to a trusting relationship between those communities and the police. Over a five-year period, he hired nearly 100 additional police officers by leveraging so many federal and state grants that Lowell secured the highest per capita law enforcement grant allocation in the nation. Among the changes he instituted in the police department were the introduction of first-rate training programs; the utilization of data-driven decision making and cutting-edge technology; an emphasis on employee accountability; and improved management of first-line supervisors. Superintendent Davis decentralized the department and opened six storefront precincts strategically placed in the core of the city's most troubled neighborhoods. He partnered with the University of Massachusetts Lowell and MCC to create the Lowell Police Regional Police Academy, which was the first institution in the Commonwealth to focus on community policing. More than 1000 police officers have been trained in this now much heralded policing approach.

He received an All-American City award from the National Civic League in 1999 for community policing; an award from DOJ in 2000 for improving race relations; and he has been recognized by the Police Executive Research Forum, the International Association of Chiefs of Police, and the Major Cities Chief Association. Over the course of his career, he has provided expert testimony on multiple occasions in the federal courts and on Capitol Hill. Commissioner Davis comes from a police family, which has allowed him to better understand the needs of police officers and the communities they serve. He is a recognized expert in community policing, crisis management, and large-scale

investigations. He brings with him a strong record of interagency collaboration and a broad range of local, state, national, and international experience in law enforcement and public safety. Commissioner Davis presently heads his own business strategy and security services firm, Edward Davis, LLC. His complete biography is at: <http://eddavisllc.com/team/edward-davis/>.

Professor Jones-Brown is a Professor in the Department of Law, Political Science and Criminal Justice Administration at John Jay College of Criminal Justice, City University of New York, and the Founding Director of the John Jay College Center on Race, Crime and Justice. She has been a member of the John Jay faculty since 1993 and the director or a research fellow at the Center since 2006. Prior to joining the John Jay faculty, she served as an assistant prosecutor in Monmouth County, New Jersey from 1990-1993, and she served on the faculty of Temple University's Department of Criminal Justice from 1987 to 1990. She holds both the Juris Doctor and doctorate in Criminal Justice from Rutgers University, and she has practical experience in both community-based and institutional corrections.

Over the course of her career, Professor Jones-Brown has conducted research related to police-community interactions, alternative policing strategies, attitudes toward police, and police use of force. Most recently, her research on stop, question, and frisk policing practices in New York City has received international attention, and her efforts co-coordinating the research working group for a unique collaboration of academic researchers, grassroots groups, and legal advocates has contributed to substantial police reforms, including the creation of an Office of Inspector General for the New York City Police Department ("NYPD"), and city-wide legislation against discriminatory policing.

Founded in 1964 as the College of Police Science, currently, John Jay College provides local, national, and international training to hundreds of police departments. Professor Jones-Brown has provided police training on the use of force, justification defenses, civil liability for law enforcement officers, criminal law, and constitutional law. She has provided diversity training at John Jay and the Monmouth County Police Academy.

For ten years, she served as a member of the graduate faculty for the NYPD Leadership Program, a tuition-free academic program for active sworn NYPD officers and supervisors. The program, which is funded by the New York City Council and the state legislature, is designed to provide students with "skills that enhance public safety, service delivery, and police management in a multiracial and multicultural city."

Throughout her course, "Perspectives on Race and Crime in America," Professor Jones-Brown interacted with hundreds of sworn officers and command staff. In 2008, she was the recipient of the William R. Bracey award from the New York Chapter of the National Organization of Black Law Enforcement Executives (NOBLE). Professor Jones-Brown has testified about community policing and police-community relations before the President's Task Force on 21st Century Policing, the U.S.



Sentencing Commission, and the New York City Council. She has participated in numerous panel discussions, media interviews, and invited talks on the topics of policing strategies, use of force, and police reform, accountability, and transparency. She is a member of the Board of Directors of the Center for Policing Equity (formerly, the Consortium for Police Leadership in Equity), a “research and action think tank” that “works collaboratively with law enforcement, communities, and political stakeholders to identify ways to strengthen relationships with the communities they serve” through the use of social science research and evidence-based approaches.

Additionally, she has served as a consulting expert to the New York State Task Force on Police on Police Shootings (2009-2010), and the New York State Office of Attorney General’s Report on Arrests Arising from the New York City Police Department’s Stop-And-Frisk Practices (2013). Her co-investigation of law enforcement’s use of confidential informants in New Jersey was released as a report by the ACLU of New Jersey in 2011. The confidential informant report, her co-authored research report on the NYPD’s use of stop-question-and-frisk practices (2010 and 2013), and her article on the police’s use of deadly force published in the American Bar Association’s Human Rights Magazine (Spring 2009) are frequently cited both nationally and internationally. Her book, *Race, Crime and Punishment*, received an award from the New York Public Library. Her complete biography is at: <http://www.jjay.cuny.edu/faculty/delores-jones-brown>.

As noted above, Mr. Rosenthal heads Squire Patton Boggs’ Global Government Investigations and White Collar practice group, and he has a three decade-long career as a highly accomplished senior-level federal trial and appellate lawyer. His complete firm biography is at: <http://www.squirepattonboggs.com/professionals/r/rosenthal-samuel>.

### **The internal organization of the team including the areas of responsibility for each member;**

Mr. Ervin would serve as the Monitor and lead the monitoring team. As such, he would be the principal liaison between the City of Ferguson, FPD, and DOJ on the one hand, and the other members of the monitoring team on the other. In consultation with all relevant parties, he would develop the work plan that the team would follow during the course of the engagement, and he would be primarily responsible for the execution of that plan. He would take the lead on producing public reports regarding FPD’s progress in implementing the terms of the Consent Decree. He would be responsible for testifying in proceedings and making any public statements. Drawing upon his Inspector General background and expertise, Mr. Ervin would take the lead on reviewing use of force and misconduct investigations to assess their quality, reliability, and adherence to the requirements of the Consent Decree.

Commissioner Davis and Professor Jones-Brown would assist Mr. Ervin by working with him to review and comment on the policies, training, and initiatives developed by FPD pursuant to the terms of the Consent Decree. They would also assist Mr. Ervin by working with him to develop methodologies for conducting reliable audits and reviews of FPD’s compliance with the Consent Decree; recommend and review metrics for assessing police practices and their effects; conduct

reliable assessments to determine whether policing in Ferguson has improved; conduct, analyze, and report on methodologically sound surveys of both police officers and community members regarding FPD's practices; and to provide or facilitate technical assistance to FPD, including recommending strategies to enhance FPD's implementation of the Consent Decree.

Mr. Rosenthal would provide advice and counsel, to the extent necessary, with regard to federal constitutional and legal issues, as well as testimony and court proceedings generally.

**A description of all other current employment, projects, or other professional undertakings for each team member, noting the team member's time commitments for each.**

Mr. Ervin is a partner in Squire Patton Boggs' Government Investigations & White Collar practice group. As a partner in the firm, Mr. Ervin devotes a minimum of 1800 hours each year to the practice of law, and he represents a variety of clients in a variety of matters. If he were selected as the Monitor, this engagement would be within his annual hourly practice commitment, not in addition to it. Accordingly, he could, and would, devote such time as is necessary to properly perform his duties as Monitor, his other client commitments notwithstanding. As the Monitor, he would anticipate spending more time on this engagement than any other team member, and, accordingly, would prioritize his overall commitments such that he could devote to the time to this important engagement that it requires and deserves.

Likewise, Commissioner Davis consults for a variety of clients with regard to security and other law enforcement-related matters, and, likewise, he would prioritize his overall commitments such that he could devote at least the minimum time reflected in the attached notional budget.

Professor Delores Jones-Brown is a professor in the Department of Law, Police Science and Criminal Justice Administration at John Jay College of Criminal Justice, City University of New York. She is also the Founding Director of the John Jay College Center on Race, Crime and Justice, and she is a Senior Research Fellow there. Her teaching and research duties are such that she could devote at least the minimum time reflected in the attached notional budget.

Mr. Rosenthal, like Mr. Ervin, has a minimum 1800 law firm practice commitment, and he would prioritize his other client commitments such that he could devote at least the minimum time reflected in the attached notional budget.

## C. Qualifications

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**Monitoring, auditing, evaluating, or otherwise reviewing performance organizations, including experience monitoring settlements, consent decrees, or court orders.**

Mr. Ervin was appointed by the President to be the Inspector General of the U.S. Department of State (2001-2002), and, later, to be the very first Inspector General of the then new U.S. Department of Homeland Security (2003-2004).

Though they are political appointees, Inspectors General, once confirmed by the Senate, are to be apolitical and independent in carrying out their oversight responsibilities.

Federal Inspectors General have teams of inspectors and auditors whose job is to assess the effectiveness, efficiency, and economy of government programs and operations, with a view to weeding out fraud, waste, and abuse. Where they find room for improvement, the Inspector General and his/her team make recommendations to agency leadership; monitor agencies' compliance with the recommendations agency management agrees to implement; and provide periodic status reports on such compliance to the agency head, congressional oversight committees, and the public.

Inspectors General also have teams of criminal investigators, or "agents," who are federal law enforcement officers whose jurisdiction extends throughout the U.S. and who are empowered by statute to, among other things, seek and execute arrest warrants; search and seize evidence upon probable cause to believe that the law has been violated; carry a weapon in the performance of their official duties; and administer or take an oath, affirmation, or affidavit from any person. Agents' job is to investigate alleged criminal, civil, and administrative wrongdoing on the part of government employees, contractors, and grantees. If their fact finding leads them to believe that the law has been violated, they make referrals to DOJ for criminal prosecution or civil litigation; if they conclude that administrative regulations or policies have been violated, they refer the matter to the applicable agency official for any appropriate administrative disciplinary measures.

During the course of his four years as an Inspector General at two major federal agencies, Mr. Ervin and his team conducted scores of inspections and audits, assessing and evaluating virtually every component of those agencies and most major programs and operations (in some cases, multiple times), and they made hundreds of recommendations to make those agencies more effective, efficient, and economical.

The Inspector General is required by law to submit a report to Congress semi-annually that summarizes all of the inspection, audit, and investigative work undertaken during the reporting period, including the number of open and closed recommendations. Links to Mr. Ervin's semi-annual reports at the Departments of State and Homeland Security, respectively, are available here:

<http://oig.state.gov/system/files/185260.pdf>;  
<http://oig.state.gov/system/files/11204.pdf>;  
<http://oig.state.gov/system/files/16022.pdf>;  
[https://www.oig.dhs.gov/PDFs/sar/OIG\\_Spring\\_2003\\_SAR.pdf](https://www.oig.dhs.gov/PDFs/sar/OIG_Spring_2003_SAR.pdf);



[https://www.oig.dhs.gov/PDFs/sar/OIG\\_Fall\\_2003\\_SAR.pdf](https://www.oig.dhs.gov/PDFs/sar/OIG_Fall_2003_SAR.pdf);  
[https://www.oig.dhs.gov/PDFs/sar/OIG\\_Spring2004SAR187c.pdf](https://www.oig.dhs.gov/PDFs/sar/OIG_Spring2004SAR187c.pdf); and  
[https://www.oig.dhs.gov/PDFs/sar/OIG\\_SARApr\\_Sep04.pdf](https://www.oig.dhs.gov/PDFs/sar/OIG_SARApr_Sep04.pdf)

Among the inspection and audit reports summarized in these semi-annual reports are several that are especially relevant to this prospective engagement because they were assessments of various aspects of the departments' internal policing functions or other law enforcement-related functions, with, where warranted, recommendations for improvement. For example, please see Open Inspector General Recommendations Concerning the Former Immigration and Naturalization Service (INS) from Unaccompanied Juveniles in INS Custody, A Report by the Department of Justice Inspector General, OIG-04-18, March 2004; Analysis of the Department of Homeland Security's Second Response to the Recommendations Contained in the Department of Justice's OIG June 2003 Report on the Treatment of the September 11 Detainees, OIG-04-09, January 2004; USSS (United States Secret Service) Inspection Division Review, February 2004; TSA (Transportation Security Administration) Office of Internal Affairs Oversight Review; and Evaluation of the Federal Air Marshal Service, OIG-04-032, August 2004. These assessments you will see were neither reflexively "pro-police" nor "anti-police;" each was complimentary or critical as the facts and circumstances warranted.

Demonstrating that the OIG is a law enforcement body itself, and not only an evaluator of the department's law enforcement bodies, each semi-annual report contains a narrative synopsis of key criminal cases undertaken by Mr. Ervin's agents during the applicable reporting period. Each report also contains a statistical table detailing the number of investigations initiated; closed, referred to DOJ for prosecution; declined for prosecution; referred to the department for administrative discipline; as well as the number of arrests, indictments, convictions, and the number and disposition of complaints received.

As Inspector General, Mr. Ervin and his investigative team were scrupulously fair, inculcating subjects when warranted by the facts and exculpating them when not. Recognizing the awesome law enforcement power of his office, and the degree to which the mere fact of being the subject of a criminal inquiry can forever taint someone, unusually, if not uniquely within the Inspector General community, Mr. Ervin instituted a practice of informing subjects, in writing, when an investigation concluded with no finding of wrongdoing.

The final point to note about Mr. Ervin's law enforcement record as Inspector General is that he took seriously the fact that Congress, in the legislation creating the Department of Homeland Security, gave its Inspector General investigative primacy over the various law enforcement forces within various components (i.e., TSA, Customs and Border Protection, Immigration and Customs Enforcement, the Secret Service, and the Coast Guard). The legislative rationale was to ensure that, at least in the most important cases, an investigative body outside the department management chain and, thus, with no motivation to be anything but objective and thorough, would do the

investigating. The aim was also to empower internal whistleblowers to report alleged wrongdoing without fear of reprisal from their superiors.

As noted in cover letters to the Secretary of Homeland Security in three of his four semi-annual reports, Mr. Ervin encountered stiff resistance from the department's internal police forces as to his robust assertion of investigative primacy, as well as from department management. He made a priority of successfully resolving this dispute, personally negotiating and drafting memoranda of agreement with each unit, as well as a management directive from department leadership, affirming the Inspector General's investigative primacy.

In addition to performing a monitor-like function as a two-time federal Inspector General, Mr. Ervin has direct and contemporary monitoring experience. He was recently approved by the Department of Education to serve as its Monitor to assess Zenith Education Group's (a non-profit company that acquired some colleges from the now defunct for-profit entity, Corinthian Colleges) compliance with the terms of an agreement to comply with applicable laws and regulations. The engagement is set to expire in January 2017, and it is renewable for an additional one-year period. (Please see <http://www.ed.gov/news/press-releases/us-education-department-accepts-selection-new-independent-monitor-zenith-education-group>.)

Further, Mr. Ervin has additional monitoring experience from serving on two monitoring teams. One of his partners at Squire Patton Boggs, Joe Walker, was appointed by DOJ and the Securities and Exchange Commission in 2014 to serve as the Monitor with respect to Weatherford International's compliance with the terms of a deferred prosecution agreement concerning the company's alleged violation of the Foreign Corrupt Practices Act, and Mr. Ervin served on that monitoring team. Another partner, former Transportation Secretary Rodney Slater, was appointed last October by the National Highway Traffic Safety Administration to be the Monitor with respect to FCA's (Fiat Chrysler Automobiles) compliance with the terms of an agreement concerning the company's auto parts recall campaign practices and related vehicle safety issues. Mr. Ervin has been among those at Squire Patton Boggs providing counsel to Secretary Slater as part of his monitoring team.

Commissioner Davis has served on the monitoring team of New York City Police Department ("NYPD") Monitor Peter Zimroth. For more information on the scope of this engagement, please see <http://nypdmonitor.org/overview/>.

**Law enforcement practices, including use of force and investigations of force; search and seizure practices; constitutional policing; bias-free policing; community policing; problem-oriented policing and engagement; crisis intervention and de-escalation techniques; First Amendment speech and protest-related rights; intake, investigation, and adjudication of complaints of officer misconduct; civilian oversight; police-youth interactions; and officer and staff training.**

Please see the preceding detail about the experience and expertise of Commissioner Davis and Professor Jones-Brown, as well as that of Mr. Ervin (in his case, specifically, the discussion of his oversight of his own police forces and those of various department components during his time as a federal Inspector General). Additionally, Mr. Ervin would engage as a local consultant a professor at Washington University School of Law for some 25 years, Kimberly Norwood. Professor Norwood is an expert in the subject of implicit bias, teaching courses on the subject, and serving as a lecturer, trainer and facilitator around the country for judges, lawyers, legislators, school administrators, and teachers. A member of the Missouri Supreme Court on Racial and Ethnic Fairness Commission, she works with the court and lawyers around the state on laws and policies relating to racial and ethnic fairness. She is a Commissioner on the ABA 360 Diversity and Inclusion Commission, and she co-chairs the Implicit Bias committee. Her full biography is available at: [http://law.wustl.edu/faculty\\_profiles/profiles.aspx?id=303](http://law.wustl.edu/faculty_profiles/profiles.aspx?id=303).

Professor Jones-Brown focuses in her teaching, writing, speaking, and consulting on these issues. As noted above, she is a professor in the Department of Law, Political Science and Criminal Justice Administration at John Jay College of Criminal Justice, City University of New York. She is also the Founding Director of the John Jay College Center on Race, Crime and Justice.

Her relevant analytical work includes: Jones-Brown, D. B. Stoudt, B. Johnston and K. Moran (2013), *Stop, Question & Frisk Policing Practices in New York City: A Primer (Revised)*, Center on Race, Crime and Justice, John Jay College of Criminal Justice, City University of New York; Jones-Brown, D. and J. Shane (2011), *An Exploratory Study of the Use of Confidential Informants in New Jersey*, Report of the American Civil Liberties Union of Newark, New Jersey; and *Mentoring as a Means of Crime Prevention and Reduction for Juvenile Offenders*, Project C.O.R.E., sponsored by Rutgers University and the New Jersey State Division of Juvenile Services (December 1993-August 1995).

*Neighborhood Policing: A Path to Safe, Respectful and Effective Policing in New York City* is an unpublished report on alternatives to the aggressive use of stop and frisk and “broken windows” policing practices. The report presents information regarding the effectiveness of practices in other jurisdictions, including San Diego, Houston, Detroit, Cincinnati, and Orlando, in producing public safety and reducing police-community tensions. It helped to inform police reform efforts in New York City. Some of its language (e.g., its core concept, “neighborhood policing”) and content was included among the recommendations made by the President’s Task Force on 21st Century Policing.

Her relevant consulting engagements include written and oral testimony before the Presidential Task Force on 21st Century Policing in 2013; serving on the advisory board of the New York State Police on Police Shooting Task Force (2009-2010); and acting as an expert for the New York State Attorney General's Report on Arrests Arising from the New York City Police Department's Stop-and-Frisk Practices (2013).

She is a member of the Executive Board of the Center for Policing Equity, and she has served for ten years on the faculty of the NYPD Leadership Certificate Program at John Jay College.

Professor Jones-Brown has won numerous relevant grants from a variety of organizations. These include: Tides Foundation, "Research Working Group on Fair and Just Policing" (2012-2014); Russell Sage Foundation, "Policing Inequality: Building an Agenda for Research on Racial Bias in Policing" (2013); Russell Sage Foundation, "Policing Equity: Scaffolding the Future of Racial and Gender Equity Research in Law Enforcement" (2011); Open Society Foundation, "Roundtable on Current Debates, Research Agendas and Strategies to Address Police-Initiated Stops in the UK and the USA" (2011); CUNY Diversity Projects Development Fund, "Race and Justice Lecture Series (2010; ACLU of New Jersey, "An Exploratory Study of the Use of Informants in Drug Prosecutions in New Jersey" (2007); and Annie E. Casey Foundation for a planning grant to the Center on Race, Crime and Justice at John Jay College (2004).

Her previous experience as an assistant Prosecutor in Monmouth County, New Jersey trying felony and family court cases gives her keen insight into the difficulties of police work when detecting and investigating crime on the street, and in preparing and presenting evidence to support criminal accusations in the courts.

**Court practices, including bias-free practices; implementation of amnesty programs; transparency in court operations; judicial and prosecutorial independence; community service programs; and fee scheduling;**

As noted above, Professor Norwood is an expert in implicit racial and ethnic bias. She was recently appointed a member of the Missouri Supreme Court Work Group on Municipal Court Reform. She has worked with judges and lawyers for almost a year studying Missouri Supreme Court rules on conflicts of interest, the Missouri Constitution, and Missouri statutes on municipalities and municipal courts. The working group has received testimony at public hearings on the topic of municipal court reform in the state. Professor Norwood has submitted writings to the Missouri Supreme Court outlining her views on municipal court reform. Please see also the immediately preceding discussion concerning Professor Jones-Brown's experience with the courts.

**Assessing legal sufficiency and compliance with constitutional and other legal requirements;**

As noted above, Mr. Ervin has served as a federal Inspector General; a federal Monitor; and a member of federal monitoring teams. In each of those capacities, he has assessed whether

government agencies' and private sector entities' operations, practices, and procedures are sufficient to comply with constitutional and other legal requirements.

In private practice as a partner at Squire Patton Boggs, Mr. Ervin specializes in defending clients being investigated by federal or state agencies, especially Offices of Inspector General, and in conducting internal investigations. In this capacity, too, among other things, his work encompasses assessing whether clients have complied with constitutional and other legal requirements.

Likewise, as a senior-level DOJ attorney and as defense counsel in government investigations and white collar criminal matters, Mr. Rosenthal has extensive experience and expertise in this area.

**Familiarity and understanding of local issues and conditions;**

Please see the discussion above concerning Professor Norwood.

**Familiarity with federal and Missouri and local laws, including civil rights laws and policies and rules governing police and municipal court practices;**

As to federal laws, please see the discussion above concerning Professor Jones-Brown's knowledge of federal civil rights laws and policies and rules governing police. Please see, too, the mention that Commissioner Davis is a member of the NYPD monitoring team, and, as such, he, too, is familiar with these laws and rules in practical terms. He has experience also with these federal laws from his time heading police forces and testifying in federal criminal and civil trials. As to Missouri and local laws, including those about municipal court practices, please see the discussion above concerning Professor Norwood's expertise.

**Evaluating, developing, or implementing processes for supervisors and managers to oversee training and accountability in a law enforcement organization;**

As to overseeing accountability in a law enforcement organization, please see the discussion above concerning Mr. Ervin's successful efforts as Inspector General to assert investigative primacy over the law enforcement organizations within various components of the Department of Homeland Security.

Otherwise, please note again that Commissioner Davis serves on the NYPD monitoring team, and part of the job of that team is to evaluate processes for supervisors and managers to oversee training and accountability in that iconic law enforcement organization.

**Evaluating organizational change and institutional reform, including applying quantitative and qualitative analyses to assess progress, performance, and outcomes;**

As explained above, through their inspections and audits, evaluating organizational change and institutional reform is part and parcel of what Inspectors General do. The point of the inspections and audits Mr. Ervin conducted or supervised during his tenure, which are summarized in the semi-annual reports cited above, was to do just that – assess progress, performance, and outcomes.

Given that the Department of Homeland Security was newly-created at the time of Mr. Ervin's service there as Inspector General, and that it was an amalgam of more than 20 different agencies as well as some "start-up" components, he paid particular attention to the need to track and assess the department's progress over time in becoming a coherent, cohesive, and otherwise effective organization. In the cover letter to his report at the end of department's first year, Mr. Ervin wrote, for example, "We acknowledge the progress that the department has made to date, and point out that much more remains to be done. Considering the enormity and complexity of reorganizing disparate agencies (each with problems of its own); creating new entities; and consolidating and integrating them into a cohesive whole, it is hardly surprising that this effort remains a work in progress. We plan to make such assessments an annual practice, and we hope that you and the Congress will find them as useful as we do in evaluating the department's performance."

Further, as a federal Monitor for Zenith Education Group and as a member of the monitoring team for Weatherford International and FCA, as such, Mr. Ervin has, and continues to evaluate organizational change and institutional reform, including applying quantitative and qualitative analyses to assess progress, performance, and outcomes. Such evaluations are the essence of what monitors do.

Please see also the discussion above concerning Professor Jones-Brown's academic work and consulting projects.

**Working with governmental agencies, including municipalities, elected officials, civilian oversight bodies, collective bargaining units, and community members interested in policing issues;**

As to Commissioner Davis, he was part of Boston Mayor Tom Menino's cabinet, and he worked closely with the various Governors of Massachusetts during his tenure (which includes both Democrats and Republicans) and local union leaders. He also worked closely with Attorney General Janet Reno, serving as a member of her community policing advisory board.

In the case of Professor Jones-Brown, she served from 2009-2010 on the advisory board of the New York State Police on Police Shooting Task Force; in 2013, she provided oral and written testimony before the Presidential Task Force on 21<sup>st</sup> Century Policing; and she acted as an expert for the New York State Attorney General's *Report on Arrests Arising from the New York City Police Department's Stop-and-Frisk Practices*. She has also worked with the American Civil Liberties Union of Newark, New Jersey on *An Exploratory Study of the Use of Confidential Informants in New Jersey*.

Please also see the discussion above concerning Professor Norwood's work in Missouri.



**Engaging effectively with diverse community stakeholders to promote civic participation, strategic partnerships, and community policing;**

Please see the discussion above concerning the activities of Commissioner Davis and Professors Jones-Brown and Norwood.

**Creation and evaluation of meaningful civilian oversight mechanisms;**

Please see the discussion above concerning Mr. Ervin's time as federal Inspector General overseeing internal police forces. Also, please see the discussion above about Commissioner Davis' overhaul and reform of internal affairs units and Professor Jones-Brown's role in the creation of the NYPD Inspector General.

**Language skills and experience working with limited English proficient persons and communities, in particular communities whose primary language is Spanish;**

Squire Patton Boggs has a number of professionals who speak Spanish fluently, including several native speakers. To the extent necessary or helpful, their services can be engaged.

**Mediation and dispute resolution, especially mediation of police complaints and neighborhood mediation;**

Commissioner Davis was very much involved in such mediation efforts during his time as a police chief. Among other things, he attended scores of community meetings where community concerns about policing related issues were regularly mediated.

**Development of effective quality improvement practices;**

Please see the discussion above concerning the relevant work of each of the principal team members.

**Use of technology and information systems – including data collection and management, and analytic tools – to support and enhance law enforcement and court practices;**

Please note the discussion above concerning Commissioner Davis' use of technology and information systems during his tenure leading police organizations. In addition to those mentioned above, he overhauled the use of CADs (computer-aided dispatch) systems, and, he now serves on a number of boards of technology companies in the security field that provide technology and information systems.

**Providing formal and informal feedback, technical assistance, training, and guidance to law enforcement agencies;**

Commissioner Davis oversaw the training academy in Boston. He also serves on the NYPD monitoring team, which, of course, provides feedback, technical assistance, and guidance to that law enforcement agency. As a private consultant to various companies, he and his team now

provide technical assistance, including active shooter training and situational awareness training. Please also see the discussion above concerning Professor Jones-Brown's training expertise.

**Reviewing policies, procedures, manuals, and other administrative orders or directives, and training programs related to law enforcement practices;**

Please note Commissioner Davis' experience as the leader of police organizations and as a member of the NYPD monitoring team.

**Institutional transformation and change management;**

Please note the discussion above about Mr. Ervin's assessment of these issues as Inspector General of the Department of Homeland Security; his service as the Monitor for Zenith Education Group; and Commissioner Davis' service as a member of the NYPD monitoring team and his role in implementing community policing in Boston and Lowell.

**Appearing in court as a judge, monitor, counsel, or expert witness, or providing other types of testimony;**

Please note that Mr. Ervin is currently serving as the Monitor for Zenith Education Group.

Further, during his time as Inspector General of both the State and Homeland Security Departments, he testified numerous times before relevant oversight committees in both the House and Senate. As a member of the Commission on Wartime Contracting in Iraq and Afghanistan from 2008-2011 ([www.wartimecontracting.gov](http://www.wartimecontracting.gov)), a body that was established by the President and Congress to investigate and oversee contracting practices in those two war theaters by the Departments of Defense and State and the U.S. Agency for International Development, he and his fellow Commissioners presided over numerous hearings and questioned witnesses. As a private citizen and in his capacity as expert in national security policy, Mr. Ervin has frequently appeared as a witness at congressional hearings.

**Writing complex reports for dissemination to diverse sets of stakeholders;**

As noted above, Mr. Ervin as Inspector General supervised the writing of scores of inspection, audit, and investigative reports. He edited all of them, and he personally wrote those reports that he considered to be the most important. (An example of a report that he authored during his tenure at the State Department is A Review of U.S. Policy Toward Venezuela, November 2001-April 2002, Report Number 02-OIG-003, July 2002, <http://oig.state.gov/system/files/13682.pdf>.) The audience for the inspection and audit reports was the Secretary and other members of the senior leadership team at the departments; the congressional oversight committees; the press; and the general public.

In private practice, he recently collaborated with a law firm partner in conducting an internal investigation for the Cleveland Metropolitan School District, and he was the co-author of the

resulting report which was made available for public release, Investigative Report: An Assessment of Certain Issues Concerning the Cleveland Metropolitan School District's Participation in the Federal E-Rate Program,

<http://www.clevelandmetroschools.org/cms/lib05/OH01915844/Centricity/Domain/47/CMSD%20E-Rate%20Investigative%20Report%20-%20final%20dated.pdf>. The audience for this report was not only the school district and the local school board, but the citizens of Cleveland and the federal agency (the Federal Communications Commission) that oversees the "E-Rate" funding program at issue.

In his capacity as a national security policy expert affiliated with the Aspen Institute as the Executive Director of its Homeland Security/Counterterrorism Program, Mr. Ervin has personally written numerous reports, including, notably, a Ford Foundation-funded evaluation of five cities' (New York, Los Angeles, Chicago, Houston, and New Orleans) preparedness for terrorism. Those reports are accessible here:

<http://www.aspeninstitute.org/sites/default/files/content/docs/pubs/TerrorismReport.pdf>

<http://www.aspeninstitute.org/sites/default/files/content/docs/pubs/LATerrorReport.pdf>

<http://www.aspeninsittute.org/sites/default/files/content/docs/hsp/HS-Houston-Report.pdf>

<http://www.aspeninstitute.org/sites/default/files/content/docs/hsp/HS-Chicago-Report.pdf>

[http://www.aspeninstitute.org/sites/default/files/content/docs/pubs/NewOrleans\\_report.pdf](http://www.aspeninstitute.org/sites/default/files/content/docs/pubs/NewOrleans_report.pdf)

The audience for these reports was composed of government officials, industry and community leaders, policy experts in academe, think tanks, NGOs, and the press.

### **Statistical and data analysis;**

Please see the discussion above regarding Mr. Ervin's work as Inspector General and as a federal Monitor, and regarding Professor Jones-Brown's academic work.

### **Experience with municipal budgets;**

As Chief and Commissioner, Davis managed budgets for the Lowell and Boston Police Departments, respectively.

### **Completing projects within anticipated timelines and budgets;**

For the four years that Mr. Ervin served as an Inspector General, Mr. Ervin and his team worked within a budget appropriated by Congress and it would have been a violation of the law (the Anti-Deficiency Act) to exceed that budget. As noted above, Mr. Ervin and his team undertook and completed scores of inspection, audit, and investigative reports, all within budget, and in the case of the statutorily required semi-annual reports to Congress, within the statutorily mandated time frame.

For those reports not explicitly mandated by Congress, the deadlines were within the Inspector General's discretion. At the time that Mr. Ervin became Inspector General in 2001, it was not uncommon in the Inspector General community for audit reports, which require more detailed work than inspections, to be in progress for as long as a year. Mr. Ervin imposed a deadline of not more than six months, even for the most complex audits. An even shorter deadline was imposed for inspection reports.

At Squire Patton Boggs, Mr. Ervin routinely completes client project within a set timeline and within the applicable budget.

#### **D. Prior Experience and References**

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**Mr. Ervin:**

- Richard Reback, Former General Counsel to the Inspectors General of the Departments of State and Homeland Security, rickreback@gmail.com, (301) 467-0784
- Dan Fisher, General Counsel and Corporate Secretary, ECMC Group (the company which owns Zenith Education Group), dfisher@ecmc.org, (651) 221-0566

**Commissioner Davis:**

- Peter Zimroth, Monitor for NYPD, Retired Partner, Arnold & Porter, peter.zimroth@aporter.com, (212) 715-1010

**Professor Jones-Brown:**

- Udi Ofer, Executive Director, ACLU of New Jersey, uofer@aclu-nj.org, (973) 642-2084
- Damon Hewitt, Senior Adviser, U.S. Programs, Open Society Foundations, (212) 548-0600
- Dr. Jeffrey Fagan, Professor, Columbia Law School, jfagan@law.columbia.edu, (212) 854-2624

**Professor Norwood:**

- Michael A. Middleton, Interim President of the University of Missouri System, middletonm@missouri.edu, (573) 882-3394
- Judge Karl DeMarce, Associate Circuit Judge, Scotland Judicial Circuit, karl.demarce@courts.mo.gov, (660) 465-2404

#### **E. Potential Conflicts of Interest or Bias**

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Some of Mr. Ervin's colleagues at Squire Patton Boggs represented journalists in a lawsuit against St. Louis County, its police force, and certain officers for alleged mistreatment during the course of their coverage of unrest in Ferguson following the death of Michael Brown. That suit was recently settled. We do not believe that this should bar Mr. Ervin's selection as Monitor or disqualify his proposed team because neither he nor they had any involvement in this representation, and he learned of it only in the

course of doing a conflicts check for purposes of responding to this RFA. Further, Mr. Ervin would pledge that no one involved in that lawsuit will be involved in any way in this monitorship. Given the size of the nation's largest firms and the wide variety of matters they undertake for a wide variety of clients, it is virtually impossible to find instances where no one in such a firm has ever undertaken a representation adverse to the interests of a prospective client. To us, the key question should be whether the proposed counsel and team have a conflict, and whether anyone in the firm who does have a conflict would have any involvement in the prospective representation.

As to Professor Jones-Brown, in June of 2015 she was contacted by the Global Security/Innovative Strategies ("GSIS") group in Washington, DC to review and evaluate the existing training curriculum being used by FPD. Based on documents provided to her by GSIS, Professor Brown-Jones conducted an assessment of the curriculum and produced a report proposing modified or additional training. The report was provided by GSIS to the Ferguson Interim City Manager, Ed Beasley, in late September. She was advised by GSIS that subsequent action regarding training was placed on hold while FPD challenged the terms and conditions of the then proposed consent decree. To the best of her knowledge, the training she proposed has not been funded or undertaken by FPD.

## **F. Estimated Costs**

In terms of allocation of responsibilities, Mr. Ervin would take the lead on policy review and report writing, while depending heavily on Commissioner Davis and Professors Jones-Brown and Norwood for help with policy review, technical assistance, training assessments, and incident reviews. As to hours, we have constructed a budget that is designed to fit within the specified five-year and annual cap, and so the listed hours for each team member are lower than they would otherwise be. If selected as Monitor and given the national significance of this particular monitorship, Mr. Ervin would be willing to devote such additional time as may be necessary to discharge his duties, irrespective of these budget constraints.

**Provide a cost estimate for this project based on the above Scope of Work and the requirements of the Consent Decree. Please note that the Parties have agreed that monitoring shall not exceed \$1.25 million over the first five years, or \$350,000 for any single year.**

- Include a projected budget for all costs including but not limited to: hourly billing rates, travel, sub-consultant/contractor services, overhead, and supplies.

See below, note, overhead and supplies are included in hourly rates.

		Monthly Hours				
Name	Position	Year 1	Year 2	Year 3	Year 4	Year 5
Clark Ervin	Partner - SPB	30.0	22.0	17.0	15.0	14.0

Sam Rosenthal	Partner - SPB	4.0	2.0	2.0	2.0	2.0
Ed Davis	Consultant	6.0	5.0	5.0	4.5	3.5
Delores Jones-Brown	Consultant	5.0	4.5	4.5	4.0	3.5
Kimberly Norwood	Consultant	4.0	2.0	2.0	2.0	2.0
	Total	49.0	35.5	30.5	27.5	25.0

		Hourly Rates				
Name	Position	Year 1	Year 2	Year 3	Year 4	Year 5
Clark Ervin	Partner - SPB	\$685	\$710	\$735	\$765	\$795
Sam Rosenthal	Partner - SPB	\$685	\$710	\$735	\$765	\$795
Ed Davis	Consultant	\$300	\$300	\$300	\$300	\$300
Delores Jones-Brown	Consultant	\$300	\$300	\$300	\$300	\$300
Kimberly Norwood	Consultant	\$300	\$300	\$300	\$300	\$300

		Yearly Budget					
Name	Position	Year 1	Year 2	Year 3	Year 4	Year 5	Total
Clark Ervin	Partner - SPB	\$246,600	\$187,440	\$149,940	\$137,700	\$133,560	\$855,240
Sam Rosenthal	Partner - SPB	\$32,880	\$17,040	\$17,640	\$18,360	\$19,080	\$105,000
Ed Davis	Consultant	\$21,600	\$18,000	\$18,000	\$16,200	\$12,600	\$86,400
Delores Jones-Brown	Consultant	\$18,000	\$16,200	\$16,200	\$14,400	\$12,600	\$77,400
Kimberly Norwood	Consultant	\$14,400	\$7,200	\$7,200	\$7,200	\$7,200	\$43,200

Fees	\$333,480	\$245,880	\$208,980	\$193,860	\$185,040	\$1,167,240
Travel	\$15,000	\$15,300	\$15,606	\$15,918	\$16,236	\$78,061
Total	\$348,480	\$261,180	\$224,586	\$209,778	\$201,276	\$1,245,301



**Break down the different activities that members of the team will perform (e.g., policy review, technical assistance, training assessment, report writing, and/or incident review).**

Addressed above.

**Include a projected allocation of hourly commitments by each team member, broken down by the number of hours projected for both on-site and off-site work.**

The travel budget assumes monthly trips by Mr. Ervin, 2 trips per year by Mr. Rosenthal, and 6 trips per year for Mr. Davis and Professor Jones-Brown. On-site work will be conducted during these trips.

**Take into account the uncertainty of the duration of the Consent Decree and include both one-time or fixed costs that are expected regardless of the duration of the contract, and annual costs that are expected for each year the contract is in effect.**

The budgeted hours reflect our expectation that Year 1 will require proportionately more time than the later years.