



THE TOWN OF

Highland Park
TEXAS

An American Community Making a Difference



MUNICIPAL COURT
BEST PRACTICES

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Rationale

At a time when most municipalities have established a “new normal” of doing more with less, most would not seek an opportunity to consider additional expenditures on academic exercises or studies that may lead to operational or procedural changes. Nevertheless, given the political and legal climate of the time, municipalities across the United States must not only be transparent but also demonstrate our transparency in all areas of governance. Policing practices have been the national focus in past years, but the United States Department of Justice (DOJ) investigation of the municipal court of the City of Ferguson, Missouri has led most of us to pause and consider our own local courtrooms as well. That is, what are our current practices, policies, and trends, and how can we demonstrate—should we ever be asked to do so—that our current courtroom practices are firmly grounded in the fair and impartial administration of justice?

The model discussed herein was born as a result of the Town’s proactive stance not only to adhere to current standards, but also to serve as a forward-looking model of courtroom excellence. We aimed to demonstrate this municipality’s transparency through innovative and progressive courtroom reform. Out of this sharp focus, a model of courtroom best practices has emerged. Although the authors recognize that other carefully considered models exist, what makes this particular model unique and valuable is, first, that it came into being as a result of the DOJ’s Ferguson study on courtroom practices and, second, that it contains statistical and program measures that enable municipalities to show in quantifiable and measured ways how justice is being administered.

In the light of Ferguson's DOJ's review; Highland Park's town administrator, Bill Lindley, retained del Carmen Consulting to revamp the police department's annual implicit racial bias study and develop a similar assessment for the municipal court. Lindley said he was left wondering if a twist on the cliché, "what you don't know may hurt you," may relate to Highland Park, after reading the government's report. The charge of overseeing this new approach to assessing bias was given to the Town's Chief Finance Officer and Administrative Director, Steve Alexander.

It became clear to us, through the course of our model development and implementation, that municipal court judges, prosecutors and court administrators are sometimes faced with unique scenarios that may result in what superficially looks like the unfair administration of justice. In such situations, inaccurate inferences and accusations may be made by outside observers with incomplete information.

Consider, for example, two hypothetical cases in which an individual receives a citation for an expired license. In one, a driver with legal immigration status ultimately pays a reduced fine. In the other, a driver who is undocumented ultimately pays the full amount of the fine. A cursory look at the outcome suggests that the undocumented defendant has been treated with unfair harshness. But, in fact, both defendants have received the same citation with the same penalty options for the same offense. The judge affords in both cases the same opportunity for disposition of the case: dismissal of the case and a reduction of the financial penalty upon the successful renewal of the driver's license. What may happen is that the undocumented defendant opts to pay the complete financial penalty because he or she lacks the immigration status required to renew the

license. This example illustrates the importance of documentation to show that the court follows and applies the law in equitable, transparent, and measurable practices.

Background

In the past few years, we have all read or heard about police shootings across the United States. Some of these have received international coverage. Many have provoked negative sentiments within the local (and broader) community, which have in turn led to demands for police reform and federal intervention. Although some citizens have questioned the constitutionality of federal government intervention in local and state matters, Section 14141 of the Violent Crime Control and Law Enforcement Act of 1994, Public Law 103-322, established the legal provision for the DOJ to intervene in instances where allegations are made that constitutional policing or court fairness are not followed in state or local patterns and practices (see Stanford Law Review¹).

Under this legal provision within the Act, and after conducting a review of a specific activity or agency, DOJ can allege violations of constitutional rights or federal law and require specific reform (for insight into this process, see Harmon, 2009; and Rushin, 2014, 2015). If an agency disagrees with DOJ, it can go to court to have the dispute adjudicated. However, most agencies cooperate with DOJ and enter into one of the multiple mechanisms by which DOJ negotiates reform with the agency, with the Consent Decree being the most serious. For example, one of the more innovative programs developed in 2011 by the Office of Community Oriented Policing Services (COPS Office) is the Collaborative Reform Initiative for Technical Assistance (CRITA)

¹ Stanford Law Review. Promoting Civil Rights Through Proactive Policing Reform. Rachel A. Harmon. (2009). Vol. 62, Issue 1. Pg. 8.

(see COPS Office Collaborative Reform²). It provides the DOJ with a middle ground between formal investigation and consent-decree monitoring, and is designed to strengthen trust between police departments and the communities they serve by providing a means to organizational transformation concerning specific issues.

Other options for DOJ and the police agency include Memoranda of Agreement (MOA), Technical Assistance Letters, or Investigative Findings and Findings with no action. While all of these agreements are comprehensive and expensive, they can define a set of best practices that create optimal conditions for proper, effective, and constitutional policing (see DOJ Special Litigation Section Cases³).

Although these agreements have mostly focused on policing, a few (such as the Ferguson investigation by the DOJ) have emphasized the absence of constitutional assurances in the patterns and practices of municipal courts. In fact, the Ferguson findings made such a profound impact that they led to the dissemination of a letter by former Attorney General Lynch to all municipal courts in the United States, with a reminder to engage all individuals in a manner consistent with the guarantees afforded by the United States Constitution.

The Highland Park Municipal Court

The Town of Highland Park, in an effort to be both proactive and responsive to the national call by DOJ to ensure that all constitutional guarantees are granted to all individuals who have encounters with municipal courts, retained the services of Alejandro (Alex) del Carmen, Ph.D. (of del Carmen Consulting, LLC), who has 20 years'

² COPS, USDOJ. <https://cops.usdoj.gov/collaborativereform>

³ USDOJ Special Litigation Section Cases and Matters. <https://www.justice.gov/crt/special-litigation-section-cases-and-matters>

experience working on civil rights issues across the United States. Dr. del Carmen was asked to review, measure, and—where needed—recommend practices related to the Town of Highland Park Municipal Court.

More specifically, the approach taken by Dr. del Carmen was to review

- a) The Municipal Court practices concerning the information disseminated to all defendants;
- b) The process whereby defendants enter a plea;
- c) The information given to Spanish speakers and the availability of translators;
- d) The information disseminated through the Highland Park Court website (in terms of accuracy, legality, and fairness);
- e) The policies that govern the Municipal Court practices (in terms of accuracy, fairness, and practice); and
- f) The current types and extent of obtained court data by which the Town measures best practices.

After lengthy discussions of these items, the Highland Park Court instituted the following measures:

- a) Much like the Town's police department, the Municipal Court staff and other civilian personnel now receive annual training in implicit racial profiling and how to guard against such practices, whether deliberate or inadvertent.
- b) The Town's website, www.hptx.org, has been modified to

- a. provide a language translator to assist people who do not use English as a primary language to obtain needed information about municipal court;
 - b. clarify information related to payment plans to line up with expectations from the Department of Justice; and
 - c. assist defendants with identifying public transportation options for accessing the Municipal Court.
- c) Protocol pertaining to people with arrest warrants who cannot pay the fine when they arrive at the Municipal Court was modified to ensure that people who are trying to pay their fine and “do the right thing” are not arrested on site merely for being unable to pay the fine in full. These individuals are now directed to attend the next available court session to speak to the judge, and their warrant is lifted until they are able to do so.
- d) At the direction of the Town judge, the court no longer issues Capias Pro Fine warrants. These warrants require that people be arrested who have a judgment against them and have neither made payment to the court nor established a payment plan. In an effort to avoid perpetuating a cycle of poverty, the Town has opted to forgo issuing these types of warrants. Instead, fine payment is arranged by other avenues.
- e) The court has also developed processes to ensure that defendants fully understand their rights and options in disposing of a citation (<http://www.hptx.org/DocumentCenterView/1752>). This information is disseminated through a brochure developed by the Texas Municipal Court

Education Center (TMCEC) and modified for Highland Park's use.

Additionally, each defendant is now provided a form to complete that is designed to ensure defendants understand the options for disposing of citations, and asks why the defendants made their specific choices as to disposition.

- f) Data related to the disposition of citations is being collected and reviewed quarterly by Dr. del Carmen to identify any trends that need further review to assist the Town in proactively ensuring that defendants continue to be treated fairly and equitably. A summary of this data is presented, by Dr. del Carmen, to the Town Council, and posted on the Town's website, each quarter.
- g) Municipal Court policies and procedures have been updated not only to incorporate many of the revised court practices and procedures, but also to ensure that court procedures are consistently up to date and carefully documented.
- h) In the event that people need alternative means of paying a citation, the Town Judge provides opportunities for individuals to dispose of citations through community service.

Conclusion

The following were critical areas for Highland Park's court which municipal courts should considered evaluating and implementing measuring mechanisms:

Critical Area	Data Set	Measurement
Indigent Cases	Number of indigent hearings/cases by race/ethnicity	Percentage of cases granted alternative means to dispose of citation
Case Disposition	All disposed cases identified by defendant's race/ethnicity	Percentage of disposed cases identified both by race/ethnicity and by each method of disposition
Court Appearances	Cases in which defendants appeared before judge as opposed to cases handled directly with court staff	Percentage by race/ethnicity of defendants in cases appearing before judge compared to those in cases disposed of by other means
Warrants	Warrants issued by race/ethnicity	Percentage of warrants issued by race/ethnicity
Communication to Defendants	Defendants in all disposed cases identified by race/ethnicity	Percentage of defendants who acknowledged that their options were explained to them

In summary, while Texas law provides many safeguards to ensure equitable treatment of citizens who engage municipal courts, it is important that Highland Park, like other municipal courts manage and monitor its own policies and practices. Through regular policy review, data analysis, and proactive communication with defendants, our court should be able to ensure that all people receive equal treatment when disposing of a citation. Moreover, as courts come under ever-increasing scrutiny, not only must our municipal court continue to provide our residents and others impartial justice under the law, we must be able to show empirically and convincingly that we have done so.