Establishing a Center for Constitutional Justice

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Introduction – The need

Over the past decade, communities across the country have questioned the fairness and constitutionality of our nation’s criminal justice systems. Many local and state police and corrections agencies have received complaints of unconstitutional practices that have led to civil rights investigations and mandated corrective action. Examples include racial bias in motor vehicle and civilian stops by the police; questionable officer-involved shootings; poor adult and juvenile prison conditions; harsh conditions in—and overuse of—prison administrative segregation; and bribes to judges and probation officers to fill private correctional facilities.

In 2011 and 2012, the U.S. Department of Justice’s (DOJ’s) Civil Rights Special Litigation Section was engaged in compliance monitoring, litigation, or investigation of 26 state and local law enforcement agencies regarding unconstitutional patterns and practices. The U.S. Attorney General noted in his report on the accomplishments of the Civil Rights Division during 2009–2012 that this figure represents the largest number of law enforcement agencies under review at any time in the history of the Department.¹

Civil rights investigations of justice agencies call the legitimacy of the justice system into question. Results of such investigations often include court-authorized consent decrees, which require agencies to upgrade their policies, procedures, training, and tactics. In addition, they often require agencies to upgrade their internal personnel supervision and accountability to comply with standards of constitutional conduct. These decrees are expensive to implement and frequently involve an independent monitor to assess, reform, and direct the operations of the agency. Such decrees can last several years (sometimes more than a decade), resulting in slow and incremental


http://www.justice.gov/crt/publications/accomplishments/
changes to ingrained departmental culture and individual behaviors. Moreover, little is known about the extent to which these civil rights investigations and consent decrees actually produce the intended results—or whether the impacts are lasting and effective. For example, the Cook County Department of Corrections has been under a consent decree for unconstitutional jail operations since 1982, with some practices still not in compliance with standards.

These troubling issues demonstrate a need to help criminal justice systems operate within the U.S. constitutional framework. Through a new Center for Constitutional Justice, the U.S. Department of Justice would have a proactive tool with which to address these challenges in their early stages, rather than relying solely on the reactive civil rights investigation and consent decree process. The Center for Constitutional Justice complements the work of the Civil Rights Special Litigation Section by assisting agencies that may need to improve but are short of the investigative threshold of unconstitutional patterns and practice. This would help to cut costs for the federal government and local jurisdictions, while preventing constitutional abuses that greatly affect citizens.

The Center – Creating coordinated, centralized resources to support constitutional practices

The Center for Constitutional Justice would be a central DOJ resource for assisting state and local jurisdictions in effectively operating their justice systems within the U.S. constitutional framework. The Center would be a repository for relevant data, such as police use of deadly force,

2 court and correctional practices, evidence-based preventive approaches, model policies, and recent court rulings. The Center would also identify jurisdictions where problems might occur based on warning signs and offer proactive interventions to prevent large-scale problems from occurring. Finally, it would identify legal trends and evolving standards of constitutionality that would help state and local jurisdictions keep abreast of fluxuating interpretations of the Constitution.

Below are potential activities for the Center for Constitutional Justice:

- Develop and disseminate an annual report on the state of constitutional justice in the United States, as well as information and reports on emerging trends, policies, and factors relevant to constitutional justice.

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2 Currently, no national statistics exist on this, or on other important indicators of constitutional practices.
• Collect data to describe the nature and extent of constitutionally-based risks and problems in justice systems and agencies, and assess trends and patterns.

• Identify and coordinate the delivery and evaluation of relevant training to state and local practitioners, administrators, and policymakers.

• Develop and catalogue model policies (e.g., use of force, police shooting review boards, complaint management and social media, administrative segregation, probation supervision) and early warning diagnostic tools.

• Provide agencies with proven methods for implementing transparent practices and community engagement.

• Conduct independent assessments of constitutional practices of systems and agencies; identify gaps in constitutional practices; work with jurisdictions to develop detailed step-by-step improvement plans; and provide implementation monitoring and evaluation.

Conclusion – The benefits

The U.S. Department of Justice should create a Center for Constitutional Justice for three primary reasons:

• The Center would embody a strong public demonstration of good faith and intentions to improve the justice system in the United States, and to attack fears and doubts head-on regarding biased operations and disproportionate contact with minorities.

• The Center would create the conditions for a more informed, proactive, civically engaged, and forward-thinking criminal justice system, one that is capable of anticipating and solving constitutional problems before they escalate into serious and expensive litigation.

• The Center would be a single source of comprehensive information for developing policy, identifying training needs, assessing agency vulnerabilities, and promoting effective community engagement.
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