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## Public Corruption in Helena, Arkansas: Analysis and Recommendations

Harvard Law School Mississippi Delta Project

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# **PUBLIC CORRUPTION IN HELENA, ARKANSAS: ANALYSIS AND RECOMMENDATIONS**

**Harvard Law School Mississippi Delta Project  
Economic Development Team**

June 2015

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## Introduction\*

In Spring 2014, Mississippi Delta Project's Economic Development team researched the causes of and possible solutions for the high crime rate in Helena-West Helena, Arkansas ("Helena"). In connection with this research, the team conducted a series of interviews with Helena citizens and community leaders. The team's research and interviews revealed that recent events had frayed the community's faith in its public institutions. In October 2011, the now well-known federal drug investigation called Operation Delta Blues culminated with the arrest of five local law enforcement officials on charges of attempted racketeering.<sup>1</sup> During its investigation, the Economic Development team learned of additional allegations of mismanagement and wrongdoing by public officials, including a pattern of dismissing criminal cases for lack of a timely trial which enabled alleged criminals to walk free, and repeated ethics violations by at least one Phillips County judge. The team decided to build upon its previous report, released in Fall 2014, which focused on crime-reduction strategies for Helena, by offering a more pointed analysis and strategies to address these problems of corruption. The goal of this report is to provide policy-makers in Helena with options for addressing corruption in order to reduce the negative economic impact that stem from such corruption and increase community trust in public institutions.

## Helena: Economic Context

Helena is a town in northwestern Arkansas located on the western banks of the Mississippi River, about seventy miles southwest of Memphis, Tennessee. Helena is the county seat of Phillips County. As of 2013, the county had about 20,399 residents,<sup>2</sup> of whom about 12,000 live in Helena.<sup>3</sup> Once a successful port town that exported Arkansas' agricultural and manufactured goods to the rest of the U.S., Helena experienced the effects of globalization and mechanization in the second half of the twentieth century. This resulted in a loss of industry, economy and jobs that Helena still has yet to recover from and caused detrimental effects to the community.<sup>4</sup> As of 2013,

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\* This report was prepared by Joe Milner and Tara Norris, members of the Harvard Law School Mississippi Delta Project under the supervision of Desta Reff, Harvard Delta Clinical Fellow. The following students from the Harvard Mississippi Delta Project were involved in researching and drafting the report: Joe Breen, Chris Burkhalter, Linda Liu, Mike Mattheiss, Grace Signorelli, April Wang, and Ian Wells.

<sup>1</sup> Ashley Blackstone, *Press Conference Names Helena-West Helena Officers Arrested*, THV 11 (Oct. 11, 2011, 5:09 PM), <http://www.thv11.com/news/article/176587/2/Press-conference-names-Helena-West-Helena-officers-arrested>.

<sup>2</sup> *Phillips County, Arkansas, QuickFacts*, U.S. CENSUS BUREAU (Feb. 5, 2015, 1:12 PM), <http://quickfacts.census.gov/qfd/states/05/05107.html>.

<sup>3</sup> *Helena-West Helena (city) QuickFacts*, U.S. CENSUS BUREAU (Feb. 5, 2015, 1:12 PM), <http://quickfacts.census.gov/qfd/states/05/0531190.html>.

<sup>4</sup> See Luke Jones, *Quest for Helena Port Tenants Took 20 Years*, ARKANSAS BUSINESS (April 29, 2013 12:00 AM), <http://www.arkansasbusiness.com/article/92185/quest-for-helena-port-tenants-took-20-years?page=all>; see also *Gibson v. Mohawk Rubber Co.*, 695 F.2d 1093, 1097 (8th Cir. 1982).

over 40% of Helena’s residents lived below the federal poverty line.<sup>5</sup> Helena’s public institutions have failed to reverse this economic decline and, as highlighted above, have contributed to Helena’s problems by tolerating and facilitating corruption.

## Corruption

“Corruption” is traditionally defined as “the abuse of public office for private gain.”<sup>6</sup> Corruption encompasses a wide range of behavior, including the acceptance of bribes, the use of public resources for personal reasons, or selective enforcement of the law.<sup>7</sup> While corruption may vary in form, its economic effects are universal. According to the World Bank, corruption adds 10% to the cost of doing business across the world<sup>8</sup> and has declared it to be “. . . among the greatest obstacles to economic and social development,”<sup>9</sup> as it skews incentive structures for economic actors, which can lead to the inefficient allocation of scarce resources. When corruption creates transactional costs for businesses, they may choose to operate in other markets that are free of these costs. Indeed, businesses have other reasons to avoid markets that are affected by corruption: first, corruption creates the risk of future prosecution and penalties; second, corruption increases business uncertainty, either by increasing the likelihood of future criminal liability for businesses that appease corrupt actors, or by placing law-abiding businesses at a comparative disadvantage relative to businesses that do engage in corrupt behavior.

The Economic Development team did not discover any direct evidence of corruption involving legitimate private-sector businesses. However, the rule of law and democratic legitimacy are perhaps most grievously injured when neither citizens nor businesses can rely upon the integrity of judicial and law enforcement officers. When legal systems are corrupt, citizens tend to perceive their social environment and the distribution of social goods as unfair.<sup>10</sup> Entrenched corruption of the public sector, including the judiciary and law enforcement, contributes to institutional inertia and prevents market

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<sup>5</sup> U.S. CENSUS BUREAU, *supra* note 3.

<sup>6</sup> Anwar Shah, *Corruption and Decentralized Public Governance 2* (World Bank, Working Paper No. 3824, 2006).

<sup>7</sup> See BERTRAM I. SPECTOR ET AL., U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT, *ANTICORRUPTION ASSESSMENT HANDBOOK 2* (2009).

<sup>8</sup> INTERNATIONAL CHAMBER OF COMMERCE ET AL., *The Business Case against Corruption 1*, <http://www.weforum.org/pdf/paci/BusinessCaseAgainstCorruption.pdf>.

<sup>9</sup> *Corruption Hunters Rally for Action Against Fraud*, WORLD BANK (Dec. 6, 2010), [http://web.worldbank.org/WBSITE/EXTERNAL/NEWS/0,,contentMDK:22783187~pagePK:64257043~piPK:437376~theSitePK:4607,00.html?cid=EXT\\_FBWB\\_D\\_EXT](http://web.worldbank.org/WBSITE/EXTERNAL/NEWS/0,,contentMDK:22783187~pagePK:64257043~piPK:437376~theSitePK:4607,00.html?cid=EXT_FBWB_D_EXT).

<sup>10</sup> See ORGANIZATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, *GOVERNMENT AT A GLANCE 2013 22* (2013).

reforms.<sup>11</sup> Fortunately, studies show that reforms favoring transparency and judicial independence create economic growth.<sup>12</sup>

As discussed above, the Economic Development team encountered instances and allegations of corruption in local law enforcement and the court system. The abuses uncovered by Operation Delta Blues fall within a traditional understanding of corruption; the law enforcement officials who were charged in connection with Operation Delta Blues admitted to accepting money from drug dealers in return for the officers' protection, using their public offices for private gain.<sup>13</sup> In interviews, the Economic Development team also heard allegations that Helena-West Helena police officers have engaged in uses of excessive force against citizens.

Signs of corruption also have appeared in the court system. For example, one of the currently presiding judges in Phillips County has been sanctioned repeatedly for ethics violations over the course of the last eight years but has managed to retain his office.<sup>14</sup> The court system's disorganization provides opportunities for additional abuses. The court system has proven unable to manage its caseload; for instance, compared to criminal cases in Arkansas state courts overall, criminal cases on the Phillips County circuit court's docket are nearly twice as likely to have been pending for more than two years.<sup>15</sup> Many of these cases have been dismissed without a trial. This process potentially returns criminals to the street and undermines the rule of law. Further, the court system's inability to administer justice on a routine basis undoubtedly undermines the public's trust in the local government and the rule of law.

This report details three broad policy recommendations in order to reduce corruption and restore trust in public institutions in Helena. First, Helena should consider implementing the use of body cameras by law enforcement officials. When accompanied by clear policies and strict privacy safeguards, body cameras can enhance transparency and reduce negative confrontations between police officers and citizens. Second, this report recommends that local courts should consider adopting case-flow management strategies. These strategies aim to increase courts' efficiency in reviewing cases by reducing the amount of time and resources spent on each case. Third, Helena should consider proposing or supporting amendments to Arkansas' rules governing judicial elections and campaign finance. Together, these recommendations

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<sup>11</sup> Edgardo Buscaglia, *Judicial Corruption in Developing Countries: Its Causes and Economic Consequences*, HOOVER INSTITUTION (Jul. 1, 1999), <http://www.hoover.org/research/judicial-corruption-developing-countries-its-causes-and-economic-consequences>.

<sup>12</sup> See, e.g., Lars P. Feld & Stefan Voigt, *Economic Growth and Judicial Independence: Cross Country Evidence Using a New Set of Indicators* 23 (CESifo Working Paper No. 906, 2003).

<sup>13</sup> See, e.g., *Three Defendants Plead Guilty in Operation Delta Blues*, FEDERAL BUREAU OF INVESTIGATION (Jan. 19, 2012), <http://www.fbi.gov/littlerock/press-releases/2012/three-defendants-plead-guilty-in-operation-delta-blues> (describing the guilty plea of former Helena-West Helena police officer Robert Rogers).

<sup>14</sup> *Ark. Jud. Discipline and Disability Comm'n. v. Simes*, 381 S.W.3d 764, 779 (2011).

<sup>15</sup> ARK. JUDICIARY, SUMMARY OF FIRST CIRCUIT ACTIVE CRIMINAL CHARGES DURING THE DATES OF 01/01/2013–12/31/2013 (2014), available at [https://courts.arkansas.gov/sites/default/files/tree/1st%20Circuit%20Criminal\\_0.pdf](https://courts.arkansas.gov/sites/default/files/tree/1st%20Circuit%20Criminal_0.pdf).

seek to address weaknesses in Helena’s public institutions and provide suggestions that these institutions can undertake to build community trust.

## I. Law Enforcement Recommendations

Building trust between police and the community is essential in order to reduce crime. The relationship between the police and low-income, minority communities is often characterized by distrust and fear; indeed, race and income are among the best predictors of evaluations of police performance.<sup>16</sup> Half of black citizens report having very little or no confidence in their local police, while less than 11% express a great deal of confidence in their police.<sup>17</sup> When people do not trust that their communities can solve problems, they tend not to report crimes, and criminal activity is allowed to continue without police intervention.<sup>18</sup> Black citizens are five times more likely to report mistreatment by police officers.<sup>19</sup> Additionally, low-income citizens are more likely to be distrustful of police than high-income citizens.<sup>20</sup> In Helena, 75% of the population is black, and over 40% of the population lives below the federal poverty line.<sup>21</sup> As a result, many of Helena’s citizens are likely to have poor perceptions of law enforcement, even in the absence of wrongdoing by law enforcement officials. These negative perceptions may already hinder Helena citizens from reporting crime, enabling criminals to evade the police and continue to contribute to Helena’s growing crime problems.

Recent events in Helena provide additional support for citizens’ distrust of police and threaten to further erode public trust in law enforcement. In October 2011, the FBI-led Operation Delta Blues arrested 70 people in Phillips County on drug-related offenses, including five law enforcement officers, all of whom either plead guilty or were convicted.<sup>22</sup> These officers accounted for about 12% of the full-time law enforcement officers in Helena and Phillips County.

Establishing strong community trust and model police behavior are essential because both public perception and police behavior can have real effects on crime. The police rely on citizen reporting of crime in order to identify and apprehend criminals. According to the 2013 National Crime Victimization Survey, only 45.6% of violent crimes and

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<sup>16</sup> See Brown & Benedict, *Perceptions of the Police: Past Findings, Methodological Issues, Conceptual Issues and Policy implications*, 25 POLICING: AN INT’L J. OF POLICE STRATEGIES & MGMT. 543, 547, 550 (2002), available at <http://www.observatoriodeseguranca.org/files/p543.pdf>.

<sup>17</sup> Ronald Weitzer & Steven A. Tuch, *Race, Class, and Perceptions of Discrimination by the Police*, 45 CRIME & DELINQUENCY, 494, 498 (1999).

<sup>18</sup> See Robert C. Davis & Nicole J. Harrison, *Willingness to Report Crimes: The Role of Ethnic Group Membership and Community Efficacy*, 49 CRIME & DELINQUENCY 564, 577 (2003).

<sup>19</sup> Weitzer & Tuch, *supra* note 17, at 502.

<sup>20</sup> Brown & Benedict, *supra* note 16, at 550.

<sup>21</sup> U.S. CENSUS BUREAU, *supra* note **Error! Bookmark not defined.**

<sup>22</sup> *Helena Ex-Officer’s Drug Conviction Upheld*, THV 11 (May 8, 2014, 6:25 PM), <http://www.thv11.com/story/news/local/2014/05/08/marlene-kalb-conviction-upheld/8856439/>; see also *Fourth Police Officer Pleads Guilty in Operation Delta Blues*, FEDERAL BUREAU OF INVESTIGATION (Mar. 16, 2012), <http://www.fbi.gov/littlerock/press-releases/2012/fourth-police-officer-pleads-guilty-in-operation-delta-blues>.

36.1% of property crimes were reported to the police.<sup>23</sup> While in many cases victims do not report crimes because they find alternative means to resolve the issue, 20% of the unreported crimes nationwide between 2006 and 2010 were unreported because the victim believed the police would not or could not help.<sup>24</sup>

A recent survey in Pennsylvania illustrated the link between public trust and reporting of crimes. In the survey, Philadelphia residents' responses indicated that, if they were victims of crimes, they would either hesitate to contact the police or decide not to contact the police at all. In contrast, residents of nearby counties indicated that they were much more willing to contact the police to report a crime. Philadelphia residents also exhibited a confidence level in police that was 22% lower than that of residents in nearby counties.<sup>25</sup> Philadelphia residents appeared to evaluate police integrity and competence less well than their county counterparts. Taken together, these results reveal that residents who distrust law enforcement's ability and willingness to enforce the law professionally may be less likely to report crimes. When these crimes go unreported, law enforcement cannot identify and apprehend criminals, and criminals remain on the streets. Without community trust, the police cannot succeed in fighting crime in Helena. In order to reverse this trend, Helena must implement changes in law enforcement policy that fight corruption and restore the public's trust in the integrity of Helena's law enforcement. This report recommends that Helena (1) adopts the use of body cameras by law enforcement officials, including clear policies regarding when and how the cameras should be used and (2) implements community policing strategies in order to build community trust.

## **A. Body Cameras as a Tool to Build Community Trust**

In order to build public trust, police departments need to increase transparency and accountability for their behavior. By implementing video surveillance of officer activities, police departments can better police citizens and themselves. People who are aware that someone might be watching become more prone to socially acceptable behavior and a heightened need to comply to rules.<sup>26</sup> For example, many schools have installed security cameras to incentivize students to behave in a socially acceptable manner; installation has correlated with reduced school-related deaths, sexual attacks, and weapons on school grounds.<sup>27</sup> Implementing video surveillance in public areas has been shown to correlate with a 51% decrease in vehicle-related property crime.<sup>28</sup> In

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<sup>23</sup> BUREAU JUST. STAT., U.S. DEPT. OF JUST., CRIMINAL VICTIMIZATION 2013 7 (2014), available at <http://www.bjs.gov/content/pub/pdf/cv13.pdf>.

<sup>24</sup> *Nearly 3.4 Million Violent Crimes Per Year Went Unreported to Police from 2006 to 2010*, BUREAU JUST. STAT. (Aug. 9, 2012, 10:00 AM), <http://www.bjs.gov/content/pub/press/vnrp0610pr.cfm>.

<sup>25</sup> *Id.*

<sup>26</sup> TONY FARRAR, SELF-AWARENESS TO BEING WATCHED AND SOCIALLY-DESIRABLE BEHAVIOR: A FIELD EXPERIMENT ON THE EFFECT OF BODY-WORN CAMERAS ON POLICE USE-OF-FORCE, POLICE FOUNDATION 3 (2013).

<sup>27</sup> J. Scott Granberg-Rademacker et al., *Do School Violence Policies Matter? An Empirical Analysis of Four Approaches to Reduce School Violence*, 4 SW. J. CRIM. JUST. 4, 11 (2007).

<sup>28</sup> FARRAR, *supra* note 26, at 4.



addition, studies have shown that speed cameras reduce speeding by 65% and serious traffic accidents by 44%.<sup>29</sup>

Body cameras are highly effective in influencing both police and citizen behavior. Following the Rodney King incident, in which an unarmed black male was beaten by police, the Police Foundation ran a yearlong study in the Rialto Police Department (RPD) in which they concluded that placing body cameras on police officers would reduce the frequency of use of force. Their research found that police shifts that used body cameras used force half as many times as police shifts without cameras<sup>30</sup> and officers used weapons only when physically threatened. Conversely, in police shifts without cameras, officers used weapons in 5 out of 17 incidents in which they were not physically threatened.<sup>31</sup> When police used body cameras and had a physical confrontation with a citizen, the officers never initiated physical contact, while in shifts without body cameras, officers initiated physical contact in 4 out of 17 instances. Compared to the previous year, the RPD's reduced their use of force by 250% and complaints to the police department decreased from 28 to 3.<sup>32</sup> By reducing police use of force, body cameras help the police eliminate negative interactions with the public and thereby help to repair community trust in law enforcement.

In the wake of controversial citizen deaths at the hands of police officers, body cameras have become a widely discussed tool for improving relations between law enforcement and their communities. Last August, Officer Darren Wilson of Ferguson, Missouri, killed Michael Brown, an unarmed eighteen-year-old, during a violent confrontation. The encounter gave rise to conflicting eyewitness accounts. In response, commentators pointed to body cameras as tools that can be used to establish an unbiased record of police encounters with citizens.<sup>33</sup> Local, state, and federal officials quickly proposed policy solutions that incorporated the use of body cameras to reduce police use of force and increase accountability. In September, the St. Louis County Police began outfitting all of its 465 patrol officers with body cameras with the goal of reducing police abuse.<sup>34</sup> In December, a Missouri state legislator also proposed a bill that would require all police officers in the state to wear body cameras.<sup>35</sup> At the federal level, the White House responded to the events in Ferguson by proposing the Body Worn Camera Partnership

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<sup>29</sup> *Id.*

<sup>30</sup> *Id.* at 8 (also noting that “the rate of use of force incidents per 1,000 contacts was reduced by 2.5 times compared to the 12 months prior to the experimental period”).

<sup>31</sup> *Id.* at 9; *see also id.* at 6 (noting that these statistics are based on officers' use-of-force incident reports, not independent reporting).

<sup>32</sup> *Id.* at 8.

<sup>33</sup> *See, e.g.,* German Lopez, *Michael Brown's family said police should adopt body cameras. They're right.*, VOX (Nov. 24, 2014, 10:50 PM), <http://www.vox.com/2014/8/16/6023481/michael-mike-brown-ferguson-body-cameras>.

<sup>34</sup> Paul Hampel, *In Ferguson, residents begin training cameras on police*, ST. LOUIS POST-DISPATCH (Sep. 20 2014, 5:29 PM), [http://www.stltoday.com/news/local/metro/in-ferguson-residents-begin-training-cameras-on-police/article\\_5e6b6cef-8a85-5bcd-87d6-6019390634aa.html](http://www.stltoday.com/news/local/metro/in-ferguson-residents-begin-training-cameras-on-police/article_5e6b6cef-8a85-5bcd-87d6-6019390634aa.html).

<sup>35</sup> Dave Hon, *Proposed bill would require body cams on officers*, ST. JOSEPH NEWS-PRESSNOW (Dec. 26, 2014, 8:21 AM), [http://www.newspressnow.com/news/local\\_news/article\\_127c4902-c07b-51e9-9c6f-ba4f208c81f5.html](http://www.newspressnow.com/news/local_news/article_127c4902-c07b-51e9-9c6f-ba4f208c81f5.html).

Program.<sup>36</sup> If approved by Congress, the program will offer \$75 million in funding to help purchase 50,000 body cameras across the country.

Body cameras create additional benefits for law enforcement. Because body cameras record officers' behavior, body cameras can also assist police departments in monitoring the behavior of their officers. This is especially important in Helena-West Helena following the events and convictions of Operation Delta Blues. If recorded footage shows an officer abusing his powers, the department can take immediate corrective action. For example, in Phoenix, the police department fired an officer after the department reviewed footage revealing "repeated instances of verbal abuse, profanity, and threats against members of the public."<sup>37</sup> Even if body cameras do not capture direct police misbehavior, they may still deter such behavior. In the first year police adopted body cameras in Mesa, Arizona, use of force complaints decreased by 75% and departmental complaints decreased by 40% from the previous year.<sup>38</sup> Because they know their actions are being recorded and wish to avoid negative outcomes like disciplinary actions, officers are more likely adhere more closely to model behavior. Further, by reducing complaints, body cameras also may help decrease litigation against law enforcement or provide greater clarity during litigation.<sup>39</sup> By eliminating litigation entirely or reducing the number of hours spent on litigation, body cameras can help to generate cost savings for the community.<sup>40</sup> Many police departments also use body cameras in training exercises with their officers. These video recordings enable departments to internally observe, evaluate, and provide more effective suggestions and recommendations to their officers.<sup>41</sup>

Recognizing the value and utility of body cameras, more police departments have begun to implement body camera programs. In response to a 2013 survey by the Police Executive Research Forum (PERF), over 25% of the police departments surveyed indicated that they had adopted body cameras to some degree.<sup>42</sup> In the same year, the New York Police Department (NYPD) adopted body cameras in five precincts after a judge ruled that their stop-and-frisk practice was unconstitutional.<sup>43</sup> In September, the Metropolitan Police Department of D.C began a six-month body camera pilot program

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<sup>36</sup> Andrea Peterson, *President Obama wants to spend \$75 million to buy police bodycams*, WASHINGTON POST (Dec. 1, 2014), <http://www.washingtonpost.com/blogs/the-switch/wp/2014/12/01/president-obama-wants-to-spend-75-million-to-buy-police-bodycams/>.

<sup>37</sup> LINDSAY MILLER ET AL., IMPLEMENTING A BODY-WORN CAMERA PROGRAM: RECOMMENDATIONS AND LESSONS LEARNED, U.S. DEP'T OF JUSTICE 8 (2014), *available at* <http://www.justice.gov/iso/opa/resources/472014912134715246869.pdf>.

<sup>38</sup> RYAN STOKES ET AL., END OF PROGRAM EVALUATION AND RECOMMENDATIONS: ON-OFFICER BODY CAMERA SYSTEM 1 (2013), *available at* [http://issuu.com/leerankin6/docs/final\\_axon\\_flex\\_evaluation\\_12-3-13-](http://issuu.com/leerankin6/docs/final_axon_flex_evaluation_12-3-13-).

<sup>39</sup> MILLER ET AL., *supra* note 37, at 34.

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

<sup>41</sup> *Id.* at 7.

<sup>42</sup> *Id.* at 2.

<sup>43</sup> Joseph Goldstein, *Judge Rejects New York's Stop-and-Frisk Policy*, NY TIMES (Aug. 12, 2013), <http://www.nytimes.com/2013/08/13/nyregion/stop-and-frisk-practice-violated-rights-judge-rules.html>.

and believes that the program eventually will reduce the number of complaints filed against police officers on an annual basis by 80%.<sup>44</sup>

Helena would specifically benefit from implementing a body camera program in either or both of the Helena-West Helena Police Department and the Phillips County Sheriff's Department. Due in part to the corrupt behavior of officers exposed by Operation Delta Blues, law enforcement in Helena and Phillips County suffers from a lack of public confidence in the departments' integrity. Body cameras will help to address both officer behavior and public perception of that behavior. Officers will be less likely to act inappropriately if their actions are filmed, and the law enforcement departments can use collected video recordings to review officer behavior and provide impartial records to the public in the event of complaints against officers. If Helena properly sets up a body camera program by implementing and enforcing clear policies and procedures, Helena can achieve these goals at a manageable cost.

Helena's unique set of resources and limitations presents its own challenges in implementing body cameras. This recommendation will examine the financial, technological, and policy concerns of body cameras for Helena while anticipating potential benefits and negatives of implementation.

#### **Implementation in Helena**

In order to provide the greatest benefits to Helena, implementation of police body cameras must include (i) a well thought-out plan to implement body camera usage and (ii) forward planning to account for and control costs.

##### ***i. A strong technological infrastructure and policy is a necessity to create an effective system.***

In order to properly implement body cameras it is critical that a police department has a very strong procedural system in place.<sup>45</sup> Without safeguards, cameras may be used in an abusive manner. Given public mistrust of the police and the abuses of police powers that led to officers' convictions following Operation Delta Blues, Helena should pay special attention to establishing and maintaining safeguards. This analysis will look at basic elements of camera usage and video storage before examining precautionary policies to prevent misuse.

##### ***a. Camera Usage***

Body cameras are typically worn on the chest or lapel or around the ear.<sup>46</sup> They can be moved to other spots on the officer depending on policy. Head-mounted units offer the advantage of recording events from the officer's point of view. Head-mounted cameras also reduce distortion that occurs when the officer is running or fighting. The Police

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<sup>44</sup> Mike Debonis & Victoria St. Martin, *D.C. police will wear body cameras as part of pilot program*, WASHINGTON POST (Sep. 24, 2014), [http://www.washingtonpost.com/local/crime/dc-police-will-wear-body-cameras-as-part-of-pilot-program/2014/09/24/405f7f5c-43e7-11e4-b437-1a7368204804\\_story.html](http://www.washingtonpost.com/local/crime/dc-police-will-wear-body-cameras-as-part-of-pilot-program/2014/09/24/405f7f5c-43e7-11e4-b437-1a7368204804_story.html).

<sup>45</sup> See MILLER ET AL., *supra* note 37, at 40.

<sup>46</sup> NAT'L INST. JUST., A PRIMER ON BODY-WORN CAMERAS FOR LAW ENFORCEMENT, 4 (2012) *available at* <https://www.justnet.org/pdf/00-Body-Worn-Cameras-508.pdf>.

Executive Research Forum (PERF) recommends that police departments require officers to keep the camera in a certain location.<sup>47</sup> Camera models vary in terms of video quality, night recording ability, battery life, audio recording, and storage limits.<sup>48</sup> A Department of Homeland Security focus group recommended that law enforcement adopt body cameras that meet minimum technical specifications.<sup>49</sup> These specifications include a resolution of 640 x 480, a frame rate of 25 frames per second, a battery life of three hours, data storage for three hours of continuous recording, and a low lux rating or an infrared illuminator. Helena should evaluate camera models in the context of their intended use and weigh their benefits against unit cost.

#### **b. Video Storage**

Video storage means and limits vary greatly based upon the selected policy and available resources. Typically video is stored either on an in-house server or an online cloud database.<sup>50</sup> An online cloud database may eliminate upfront server costs and outsource IT issues but will require payment of ongoing fees. For example, Evidence.com provides cloud data storage for law enforcement and is used by police departments in Salt Lake City, Utah; Rialto, California; and Mesa, Arizona, among others.<sup>51</sup> Evidence.com offers multiple tiers of service with monthly fees ranging from \$15 to \$55 per user.<sup>52</sup> Storing data in-house will eliminate monthly fees but will require Helena to purchase server units and potentially hire personnel to manage the in-house system. Helena also will need to establish a video retention policy that specifies how long footage must be retained. Storage of videos must comply with state evidentiary rules and be properly protected.<sup>53</sup> PERF recommends that departments classify videos upon upload and be flagged as “evidentiary” if they relate to an investigation or capture a “confrontational encounter” with a member of the public.<sup>54</sup> All other videos are then only stored temporarily. PERF notes that “60 or 90-day holding periods are common.”<sup>55</sup> Ashland, Virginia is a small rural town of 7,000 citizens that has adopted police body cameras.<sup>56</sup> Their video storage lasts 45 days unless the video is needed for evidence.<sup>57</sup> Shorter holding periods would cut storage costs. However, in developing its retention policy Helena also should consider Arkansas public disclosure laws and the benefits

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<sup>47</sup> MILLER ET AL., *supra* note 37, at 39.

<sup>48</sup> NAT’L INST. JUST., *supra* note 46, at 6.

<sup>49</sup> See U.S. DEP’T HOMELAND SEC., WEARABLE CAMERA SYSTEMS (AEL REFERENCE NUMBER 13LE-00-SURV) 1 (2012), *available at* [http://storage.viewu.com/MediaKit/Wearable-Camera-Systems\\_SAVER.pdf](http://storage.viewu.com/MediaKit/Wearable-Camera-Systems_SAVER.pdf).

<sup>50</sup> MILLER ET AL., *supra* note 37, at 15.

<sup>51</sup> NAT’L INST. JUST., *supra* note 46, at 33.

<sup>52</sup> *Pricing & Purchase Information*, EVIDENCE.COM, <http://www.evidence.com/pricing-info/> (last visited Dec. 31, 2014).

<sup>53</sup> MILLER ET AL., *supra* note 37, at 16.

<sup>54</sup> *Id.* at 43.

<sup>55</sup> Matt Pearce, *Growing use of police body cameras raises privacy concerns*, LA TIMES (Sept. 27, 2014), <http://www.latimes.com/nation/la-na-body-cameras-20140927-story.html>.

<sup>56</sup> Shelby Mertens, *Police License Plate Readers, Cell Phone Tracking and the Fourth Amendment*, VA. FREE CITIZEN (Sept. 9, 2014), <http://viriniacitizen.com/2014/09/09/police-license-plate-readers-cell-phone-tracking-fourth-amendment/>.

<sup>57</sup> *Id.*

and drawbacks to making video footage available to the public for longer periods of time.<sup>58</sup>

### ***c. Safeguards to Prevent Abuse***

In developing a body camera policy, the Helena police department should carefully consider how to establish a series of safeguards to prevent abuse. Recorded video brings about privacy concerns in every step of the process.<sup>59</sup> First, the policy should address when and where police should be allowed to record. These parameters will clarify general expectations for the cameras' operation and limit officers' discretion for operating cameras to specific situations in which video recording may violate citizens' privacy rights. Many departments utilize a policy in which cameras must be turned off when entering private homes or while interviewing witnesses that do not give their express consent to be recorded.<sup>60</sup> Seeking to balance the benefits of body cameras against the complications of sensitive situations, these policies seek to respect privacy rights and provide officers with some discretion in conducting investigative work. Other potential situations when restriction of camera use may be advised would include victims of sexual crime or others of a highly private nature.<sup>61</sup> Helena should consider adopting a policy that requires officers to have their cameras on at all times during calls for service and encounters with citizens except when entering homes or when a citizen being interviewed has requested that the interview not be filmed. This policy would ensure both that officers are accountable for recording most of their policing activities and that citizens' privacy rights are respected. The Body Worn Video Steering Group ("BWVSG"), an organization created to support public debate about body-worn cameras, has published a template policy for police use of body cameras.<sup>62</sup> Helena should consider consulting BWVSG's template policy when developing its own policy.

Helena's body camera policy also should provide strict rules regarding video upload and storage. According to PERF, department policy should strictly forbid officers from uploading body camera footage for personal use or for posting on public or social media websites.<sup>63</sup> Retrieval and viewing of recordings should occur only under certain conditions, such as a complaint or arrest, and should follow a procedure outlined in the department policy.<sup>64</sup> By establishing a clear procedure, the department can eliminate opportunities for abusing access to recordings.

Because body-worn cameras are in the possession of officers while officers are on patrol, opportunities may arise where officers are tempted to tamper with the cameras and recordings. For example, the chief of the Daytona Beach police department reported that an officer repeatedly turned off his camera when encountering members of

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<sup>58</sup> MILLER ET AL., *supra* note 37, at 64.

<sup>59</sup> *Id.* at 11.

<sup>60</sup> *See Id.* at 12, 15.

<sup>61</sup> *See Id.* at 18.

<sup>62</sup> *See Procedures and Guidelines*, BODY WORN VIDEO STEERING GROUP, <http://www.bwvsg.com/resources/procedures-and-guidelines/> (last visited July 9, 2015).

<sup>63</sup> MILLER ET AL., *supra* note 37, at 46.

<sup>64</sup> *Id.* at 45.

the public.<sup>65</sup> In addition to establishing strict policies and expectations for officer operation of body cameras, Helena may want to consider purchasing cameras with anti-tampering features.<sup>66</sup> Such features can help to ensure the integrity of the body camera program. Anti-tampering features and policies may also be necessary in order to ensure that recordings can be admitted as evidence.<sup>67</sup>

**d. The financial cost of body cameras will be substantial for Helena.**

The financial cost of body cameras is perhaps the most important element in consideration for municipalities. The Helena city council and police department and the Phillips County sheriff's department have limited funding and must allocate their resources to the most pertinent issues. Considering this, body cameras may be a luxury that Helena cannot afford out of its own pockets. However, federal grant funding may be available which could assist in minimizing the overall costs. The Department of Justice (DOJ) offers funding to assist local law enforcement through two programs. First is the DOJ's Edward Byrne Memorial Justice Assistance Grant (JAG) Program which offers funding to local governments for a variety of criminal justice needs, including equipment and technology improvement programs.<sup>68</sup> In 2014, Helena used JAG funding to offset the cost of the police department's mobile analytics software.<sup>69</sup> The police department could easily re-approach JAG additional funding to support this venture. Second, the DOJ's Community Oriented Policing Services (COPS) Office also provides funding for equipment purchases through its COPS Technology Program.<sup>70</sup> These funding sources should help make body cameras a financially feasible option for Helena.

The total cost associated with implementing body cameras includes a number of expenses. Camera purchase is the primary upfront cost. Camera prices range from around \$120 to \$2,000 per camera.<sup>71</sup> Most agencies tend to spend around \$800 to

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<sup>65</sup> *Id.* at 8.

<sup>66</sup> See MICHAEL D. WHITE, OFFICER OF COMMUNITY ORIENTED POLICING SERVICES, POLICE OFFICER BODY-WORN CAMERAS: ASSESSING THE EVIDENCE, U.S. DEP'T OF JUSTICE, 12 (2014) (describing camera models with anti-tampering features), available at <https://www.ojpdagnosticcenter.org/sites/default/files/spotlight/download/Police%20Officer%20Body-Worn%20Cameras.pdf>

<sup>67</sup> Craig E. Ferrell, *The Future Is Here: How Police Officers' Videos Protect Officers and Departments*, 80 THE POLICE CHIEF 16–18 (2013), available at [http://www.policechiefmagazine.org/magazine/index.cfm?fuseaction=display\\_arch&article\\_id=3139&issue\\_id=102013](http://www.policechiefmagazine.org/magazine/index.cfm?fuseaction=display_arch&article_id=3139&issue_id=102013).

<sup>68</sup> BUREAU JUST. ASSISTANCE, EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT (JAG) PROGRAM FY 2014 LOCAL SOLICITATION 4 (2014), available at <https://www.bja.gov/Funding/14JAGLocalSol.pdf> (last visited Dec. 31, 2014).

<sup>69</sup> *Helena-West Helena Technology Enhancement Project*, U.S. DEPT. JUSTICE, <http://grants.ojp.usdoj.gov:85/selector/awardDetail?awardNumber=2014-DJ-BX-0860&fiscalYear=2014&applicationNumber=2014-H4054-AR-DJ&programOffice=BJA&po=BJA> (last visited July 9, 2015).

<sup>70</sup> *COPS Technology Grants*, COMMUNITY ORIENTED POLICE SERVICES, <http://www.cops.usdoj.gov/default.asp?Item=58> (last visited July 9, 2015).

<sup>71</sup> MILLER ET AL., *supra* note 37, at 32.

\$1,200 per camera, according to PERF.<sup>72</sup> Data storage can be more expensive, although the cost varies in relation to the number of cameras and the amount of time the cameras are used. Depending on how often officers are filming, cloud storage space for the camera recordings can be very expensive. For example, one department “spent \$67,500 to purchase 50 cameras and will spend approximately \$111,000 to store the video on a cloud for two years.”<sup>73</sup> Helena’s police department is much smaller and would only require around 10 cameras for the use of all on-duty officers. If Helena’s costs were exactly proportional to the costs in the example above, a body camera program in Helena would be somewhere around one-fifth of the previously stated price for a 50-camera unit. Thus, the two-year cost for Helena could be around \$35,000 to \$40,000. Helena could reduce this cost by purchasing less expensive cameras and establishing a policy that officers should turn on their cameras only when interacting with members of the public and thereby decreasing the amount of storage needed.

The final major cost to consider is the administration of the body camera program. Officers will need to be trained in how to properly use the devices. If Helena decides to manage the video storage itself, a few individuals will need extensive knowledge of the required computer systems and will need to spend substantial time reviewing videos and uploading data. Otherwise, Helena will need to pay a third-party vendor to manage the video storage. Determining the exact monetary cost of this time spent is too difficult to estimate for the purposes of this report but very important to consider when creating a plan to purchase and implement body cameras. Helena should consider these costs alongside the benefits of body cameras when determining whether to pursue such a program.

Helena might also be well served to begin with a pilot program that distributes cameras only to a subset of officers. For example, Helena could assign cameras to 5 police officers over a six-month period to evaluate the effects the cameras may have in Helena. This approach would minimize the upfront cost of camera purchases and would give the police department time to adapt to the system. Any issues with implementation or problems may be discovered before fully outfitting the police force. If, after the conclusion of the six-month pilot period, the department recognizes that the program may benefit from changes to its policies and procedures, it could implement a follow-up six-month trial period to test these changes before launching the full program. Many towns have begun with pilot programs before launching a larger body camera program after successful experimentation. In April, the small rural town of Daleville, Indiana, purchased seven body cameras to be used by its police force.<sup>74</sup> The town has now decided to expand the program with additional cameras.<sup>75</sup> A similar pilot approach to body cameras may be a great option to make body cameras affordable and effective for Helena.

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<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> Derrik Thomas, *Daleville Police Department cameras reduce discrepancies*, RTV6 (Aug. 20, 2014, 8:45 PM), <http://www.theindychannel.com/news/local-news/daleville-police-department-cameras-reduce-discrepancies>.

<sup>75</sup> *Id.*

## Final Recommendation for Body Camera Implementation

This report recommends that the Helena Police Department equip its officers with body cameras as a measure to increase accountability in local law enforcement as well as community trust. In connection with implementing a body camera program, Helena also should:

1. Store its video footage on an online cloud database to eliminate upfront server costs and outsource IT issues.
2. Purchase cameras with anti-tampering features to prevent officers from deleting video footage.
3. Select a few police department staff to complete all uploads and review videos.
4. Create a procedure to retrieve and view recordings under select condition such as complaint or arrest.
5. Establish safeguards to prevent abuse. Develop a policy in which cameras must be turned off when entering private homes or while interviewing witnesses that do not give their express consent to be recorded. Camera use should also be restricted in situations of sexual crime.

## B. Community Policing

Community policing is an approach to law enforcement that emphasizes cooperation between police officers and the community.<sup>76</sup> Community policing emphasizes the connection between police officers and the communities they serve, focusing on problem-solving and integrating law enforcement officers into their communities.<sup>77</sup> Community policing is proactive: by conceiving of their job as problem-solving instead of merely responding to incidents, law enforcement officers are able to better understand and respond to the needs of their communities. Polls of communities in which law enforcement have switched to a community policing approach demonstrate that it aids “community relations and trust in police,” including “satisfaction with policing” and perception of police “legitimacy.”<sup>78</sup>

One important aspect of community policing is “geographic ownership”: that is, the assignment of officers to particular patrol areas that they “own.” Within those geographic areas, law enforcement should have flexibility to determine the best way to identify and address problems.<sup>79</sup> To encourage strong relationships between officers and their areas

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<sup>76</sup> BUREAU OF JUSTICE ASSISTANCE, *Understanding Community Policing: A Framework for Action*, U.S. DEPARTMENT OF JUSTICE, 15-16 (1994), available at <https://www.ncjrs.gov/pdffiles/commp.pdf>; Community policing was described in the Mississippi Delta Project’s previous report, *Crime Reduction in Helena, Arkansas: Analysis and Recommendations*, at pp. 9–11.

<sup>77</sup> *Does Community Policing Work?*, POLICEMAG.COM (Dec. 1, 2005) <http://www.policemag.com/channel/patrol/articles/2005/12/does-community-policing-work.aspx>.

<sup>78</sup> Charlotte Gill et al., *Community-oriented policing: a systematic review*, 10 J. OF EXPERIMENTAL CRIMINOLOGY 399, 400 (2014), available at [http://download.springer.com/static/pdf/627/art%253A10.1007%252Fs11292-014-9210-y.pdf?auth66=1410647077\\_073366a2713645d16d2995a856884702&ext=.pdf](http://download.springer.com/static/pdf/627/art%253A10.1007%252Fs11292-014-9210-y.pdf?auth66=1410647077_073366a2713645d16d2995a856884702&ext=.pdf).

<sup>79</sup> Nadine Connell et al., *Can a Community Policing Initiative Reduce Serious Crime?* 11 POLICE QUARTERLY 127, 134 (2008).



of the community, law enforcement officers should be assigned a permanent beat when possible.<sup>80</sup> As they become acquainted with residents, officers will be better able to work with community organizations to engage in problem-solving activities like cleaning up neglected areas—which has both crime-reduction and other community benefits—and organizing neighborhood watches and other mechanisms to prevent and address crime.<sup>81</sup>

Community policing is a two-way street: law enforcement officers must engage with community members, and police departments should have a mechanism to allow community members to reach out to them. Technology can help ease the burden of engaging with law enforcement, especially in a largely rural community like Helena. For example, social media or “online police reporting” systems can be established to allow citizens to report non-emergency criminal behavior.<sup>82</sup> Moreover, online resources can also be used to collect feedback about police perception of the Helena police force and the community’s priorities.<sup>83</sup>

## II. Judicial System Recommendations

### Caseflow Management

#### A. Introduction

Another problem that has led to increased public corruption and distrust in the justice system is inefficient and backlogged courts. The struggles of the Phillips County courts to deal fairly and efficiently with its overloaded docket has hamstrung Helena’s ability to put criminal offenders behind bars and contributed to the erosion of public trust in the criminal justice system. In July 2012, 44% of the criminal cases on the Phillips County circuit court’s docket had been pending for more than two years, compared with a statewide average of 27% in 2011.<sup>84</sup> The court dealt with this extreme overload by holding a one-time emergency special session and dropping more than 200 felony cases.<sup>85</sup> However, by the end of 2013, 48% of criminal charges on Phillips County’s docket had been pending for more than two years, and the total number of charges

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<sup>80</sup> Allison Chappell, *The Philosophical Versus Actual Adoption of Community Policing: A Case Study*, 34 CRIM. JUST. REVIEW 5, 7 (2009).

<sup>81</sup> *Id.*

<sup>82</sup> See Indrajit Basu, *Social Media Elevates Community Policing*, DIGITAL COMMUNITIES (Aug. 6, 2012), <http://www.digitalcommunities.com/articles/Social-Media-Elevates-Community-Policing.html> (last visited Sept. 23, 2014).

<sup>83</sup> This idea was first proposed in the previous Mississippi Delta Project report on Helena, *Crime Reduction in Helena, Arkansas: Analysis and Recommendations*, at p. 10.

<sup>84</sup> Chad Day and Cathy Frye, *Audit: More work needed in Phillips County courts*, ARKANSAS DEMOCRAT-GAZETTE (Sept. 8, 2012, 4:15 AM), <http://www.arkansasonline.com/news/2012/sep/08/audit-more-work-needed-phillips-county-co-20120908/>.

<sup>85</sup> Chad Day and Emily Walkenhorst, *Phillips County drops 197 felony cases*, ARKANSAS DEMOCRAT-GAZETTE (June 21, 2012, 6:02 AM), <http://m.arkansasonline.com/news/2012/jun/21/phillips-county-drops-197-felony-cases-20120621/>.

pending had increased by 43% from the beginning of 2013.<sup>86</sup> This chronic backlog puts pressure on the courts to clear cases from their dockets by any means possible. Judges and prosecutors may be tempted to support dismissals in order to ease this backlog, even if such actions create an uneven application of justice or allow criminals to remain on the streets. As a result, the public may perceive the courts to implement justice unevenly or sporadically. As with public perception of law enforcement, a decline in public perception of the courts could lead citizens to underreport crimes. The combination of underreported crime and dismissals of cases without trials would contribute to Helena's crime crisis. As it becomes apparent that the justice system cannot handle Helena's problems, the community will lose faith in the criminal justice system's ability to uphold the rule of law.

In conjunction with this heavy backlog, court documents commonly and continually have been mismanaged. For example, in the midst of a backlog on the traffic docket, a Phillips County District Court judge recently dismissed 20 DWI charges because current City Attorney Chalk Mitchell could not find the case files.<sup>87</sup> In other instances, large numbers of cases were reported to have been voluntarily dismissed. In interviews, one court official asserted that defendants whose cases had been dismissed claimed to have "worked it out" with the former city attorney.<sup>88</sup> The city attorney never informed the court of these arrangements. While no formal misconduct charges have ever been brought against Helena's former city attorney or prosecutor, these arrangements, made possible by the combination of a heavy backlog and file mismanagement in Phillips County, further perpetuate a lack of transparency and fairness in the system and only serve to foster more public distrust.

Helena's high crime rate, history of case mismanagement, and past exposure to public corruption call for more enduring changes to the way the courts manage their caseload. A study by the National Center for State Courts on the causes of judicial efficiency found that "both speed and backlog are determined in large part by established expectations, practices, and informal rules of behavior of judges and attorneys."<sup>89</sup> According to one court official, "When a case doesn't go through the system properly, there's a lot of revenue lost."<sup>90</sup> Cases that are voluntarily dismissed through out-of-court arrangements waste county resources on preliminary hearings but do not recoup those costs through the fees and fines that would be realized in a case carried to its conclusion in the courts. Improved caseload management can save time and resources

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<sup>86</sup> ARK. JUDICIARY, SUMMARY OF FIRST CIRCUIT ACTIVE CRIMINAL CHARGES DURING THE DATES OF 01/01/2013–12/31/2013 (2014), *available at* [https://courts.arkansas.gov/sites/default/files/tree/1st%20Circuit%20Criminal\\_0.pdf](https://courts.arkansas.gov/sites/default/files/tree/1st%20Circuit%20Criminal_0.pdf).

<sup>87</sup> Chad Day and Cathy Frye, *No files, so court dismisses 20 cases*, ARKANSAS DEMOCRAT-GAZETTE (Jul. 10, 2012, 5:11 AM), <http://www.arkansasonline.com/news/2012/jul/10/no-files-so-court-dismisses-20-cases-20120710/>.

<sup>88</sup> Interview in Helena-West Helena, Ark. (Mar. 27, 2014), notes on file with the Mississippi Delta Project.

<sup>89</sup> THOMAS CHURCH ET AL., JUSTICE DELAYED: THE PACE OF LITIGATION IN URBAN TRIAL COURTS, NAT'L CTR. FOR STATE CTS, 54 (1978).

<sup>90</sup> Chad Day and Cathy Frye, *Dearth of funds hinders justice*, ARKANSAS DEMOCRAT-GAZETTE (May 20, 2012, 5:28 AM), <http://www.arkansasonline.com/news/2012/may/20/dearth-funds-hinders-justice-20120520/>.

and increase public trust in the court. The Phillips County circuit and district courts can improve their caseload management systems by (1) increasing the capacity of its personnel, (2) providing adequate training to personnel, and (3) enacting caseload standards.

## **B. Recommendations**

### ***i. Increase Capacity of Personnel***

#### ***a. Appointing a Court Manager or Case Coordinator***

The Phillips County courts can improve caseload management by increasing capacity of personnel either through hiring new staff or investing in professional development for current staff. If the courts do not already have a court manager or case coordinator, hiring one or repurposing current staff could improve courtroom accuracy and efficiency. In typical caseload management models, the judge and the court manager or case coordinator work together to develop and implement a deliberate approach to caseload management.<sup>91</sup> The case coordinator helps the judges to monitor the progression of cases and keep them on schedule from filing through post-disposition. The case coordinator can also keep track of record submissions, manage the judge's trial schedules, and measure the court's caseload performance.

Courts throughout Arkansas have hired court managers and reaped the benefits. Arkansas' 19<sup>th</sup> East Judicial Circuit, which covers Carroll County, has had a court manager since 2011.<sup>92</sup> According to a case study of the 19<sup>th</sup> East Circuit, "[a]ggressive caseload management . . . provides timely dispositions of cases and due process to litigants."<sup>93</sup> The results support this conclusion. Despite having only a single judge and dealing with a caseload comparable to the one in Phillips County, the 19<sup>th</sup> East Circuit has dealt with cases much quicker than the Phillips County Circuit Court. For example, at the end of 2013 only 17% of the criminal charges on the 19<sup>th</sup> East Circuit's docket had been pending for more than two years.<sup>94</sup> In contrast, 48% of the criminal charges on the Phillips County Circuit Court's docket had been pending for more than two years. Neighboring St. Francis County, whose Circuit Court hired a court manager seven years ago, saw similar results. At the end of 2013, only 30% of the criminal charges on St. Francis County's docket had been pending for more than two years.

#### ***b. Provide Caseload Management Training for Personnel***

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<sup>91</sup> See Richard B. Hoffman, *Beyond the Team: Renegotiating the Judge-Administrator Partnership*, 15 THE JUST SYS. J. 652, 658 (1991).

<sup>92</sup> *Berryville woman a graduate of court management program*, CARROLL COUNTY NEWS (Sept. 3, 2011), <http://www.carrollconews.com/story/1759063.html>.

<sup>93</sup> NADINE HOLLAND, IRREDUCIBLE COMPLEXITY: THE WORKLOAD OF A ONE-JUDGE COURT, INST. CT. MGMT., 39 (2014), *available at* <http://www.ncsc.org/~media/Files/PDF/Education%20and%20Careers/CEDP%20Papers/2014/The%20Workload%20of%20a%20One-Judge%20Court.ashx>

<sup>94</sup> ARK. JUDICIARY, CRIMINAL CIRCUITS FROM 01/01/2013 THROUGH 12/31/2013 — NINETEENTH CIRCUIT EAST, *available at* <https://courts.arkansas.gov/sites/default/files/tree/19th%20E%20Circuit%20Criminal.pdf>.

Even if courts already have a court manager or comparable staff that focus on records and caseload management, it is still possible to optimize this position by taking advantage of existing professional development programs that can train staff in best practices and help them introduce more efficient systems to the court. Trainings help case management staff develop skills and knowledge that are necessary for improving case flow management. Typically, the training curriculum covers topics such as the fundamental concepts in case flow management, technology, leadership, and human resources. A number of universities and organizations offer training programs that give participants the opportunity to become certified upon program completion.

A new court manager would benefit from entering the Arkansas Court Manager Program.<sup>95</sup> Offered by the Arkansas Judiciary's Administrative Office of the Court, the Court Manager Program trains court managers in the fundamental principles of caseload management; methods used to manage technology projects, human resources, and financial resources; and the use of CourTools, a software package created by the National Center for State Courts ("NCSC") to help courts measure performance.<sup>96</sup> The program consists of six 2.5-day seminars spread over three years. The seminars are held in Little Rock, and program costs consist of a \$150 tuition fee as well as travel, lodging, and eating expenses. The next rotation of seminars will begin in June 2017.<sup>97</sup> The Carroll County court manager, discussed above, graduated from the Arkansas Court Manager Program in 2011. As of May 2014, 70 of Arkansas' 121 Trial Court Assistants had participated in this program.<sup>98</sup>

Other educational programs also exist and may be worth consideration depending on the courts' needs and the background of the court personnel. American University's Justice Programs Office offers a one-week, 30-hour certificate program. Main courses include Judicial System Administration and Technology Applications to the Justice System.<sup>99</sup> Organizations such as the Justice Management Institute, located in Arlington, Virginia, offer training workshops that range in length from sixty minutes to two days.<sup>100</sup> Alternatively, NCSC offers certification courses that can be completed entirely online. Some courses offer certification in the Certified Court Management Program and cost \$595, while others do not offer certification but can be taken for free. All courses may be taken at any point during the three months following registration.<sup>101</sup>

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<sup>95</sup> See *Court Management Program*, ARK. JUDICIARY, <https://courts.arkansas.gov/administration/education/court-management-program> (last visited July 9, 2015).

<sup>96</sup> *CourTools: Giving the Courts the Tools to Measure Success*, COURTOOLS [http://www.courtools.org/~media/Microsites/Files/CourTools/CourTools\\_Trial\\_Implementing\\_CourTools.a shx](http://www.courtools.org/~media/Microsites/Files/CourTools/CourTools_Trial_Implementing_CourTools.a shx) (last visited July 9, 2015).

<sup>97</sup> *Judicial Branch Education Calendar 2015*, ARK. JUDICIARY, <https://courts.arkansas.gov/sites/default/files/JudicialBranchEducationCalendar2015.pdf> (last visited July 9, 2015).

<sup>98</sup> HOLLAND, *supra* note 93, at 40.

<sup>99</sup> *Certificate Program*, AM. U. SCHOOL OF PUB. AFF., <http://www.american.edu/spa/jpo/certificate.cfm> (last visited Dec. 31, 2014).

<sup>100</sup> *Case Management Training*, THE JUST. MGMT. INST., <http://www.jmijustice.org/education-training-3/case-management-education-2/> (last visited July 9, 2015).

<sup>101</sup> *Court Management*, NAT'L CTR. FOR STATE CTS., <http://www.ncsc.org/Topics/Court-Management.aspx> (last visited July 9, 2015).

In addition, a wealth of resources for case management personnel are available online for free or a nominal fee. For instance, the National Association for Court Management (“NACM”) offers free recordings of sessions from management conferences. In addition, members of the NACM have access to published periodicals such as the *Court Manager* and the *Court Express*.<sup>102</sup> The National Center for State Courts also offers an extensive list of free resources for case management staff. The resources range from reports on best practices and recommendations for court management to studies on the implementation of electronic recordings in court systems.<sup>103</sup>

If caseflow management personnel are unable to participate in the Arkansas Court Manager Program or another formal certification program, then the personnel still would benefit from reviewing some combination of free online courses and resources. For example, staff members who wish to expand their management skills could review NCSC’s online course entitled “A First Course in Effective Supervision”<sup>104</sup> and any of the caseflow management guides available on NCSC’s website.<sup>105</sup> While the benefits of in-person instruction and certification should not be discounted, these resources may help acquaint court personnel with helpful concepts like improving communication and teamwork within the court system and monitoring court performance. Court personnel can use these concepts to improve caseflow management in the Phillips County courts without incurring significant expenses.

## ***ii. Implement Caseflow Standards***

Once court personnel have become acquainted with the basic concepts of caseflow management, they should develop standards to guide their implementation of caseflow management. If executed properly, these standards lead to “a faster, more cost-effective, and higher quality trial court process in [the] court.”<sup>106</sup> Standards that a court can employ to increase the efficiency of its case management system include early court intervention, differentiated case management, fixed trial dates, and data collection.<sup>107</sup>

### ***a. Early Court Intervention***

Early court intervention and continuous case control require the court, not the parties, to take responsibility for the progress of cases from filing through post-disposition. Early court intervention generally involves proactive management of the pretrial process in order to reduce the amount of time between filing and disposition. Courts practicing

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<sup>102</sup> *Resources*, NAT’L ASS’N FOR CT. MGMT., <https://nacmnet.org/resources/index.html> (last visited July 9, 2015).

<sup>103</sup> *Caseflow Management Resource Guide*, NAT’L CTR. FOR STATE CTS., <http://www.ncsc.org/Topics/Court-Management/Caseflow-Management/Resource-Guide.aspx> (last visited July 9, 2015).

<sup>104</sup> *Different Work: A First Course in Effective Supervision*, NAT’L CTR. FOR STATE CTS., [https://courses.ncsc.org/course/Different\\_Work](https://courses.ncsc.org/course/Different_Work) (last visited July 9, 2015).

<sup>105</sup> NAT’L CTR. FOR STATE CTS., *supra* note 103.

<sup>106</sup> DAVID STEELMAN, *IMPROVING CASEFLOW MANAGEMENT: A BRIEF GUIDE*, NAT’L CTR. FOR STATE CTS., 2 (2008).

<sup>107</sup> *See id.* at 3.

early court intervention may require counsel to schedule preliminary hearings or status meetings or even jointly present a discovery/case management plan to the court. A study of 37 trial courts concluded that early case intervention by the court correlates with shorter case times overall, reducing costs to both the parties and the court.<sup>108</sup> Another study found that courts practicing early court intervention reduced the amount of time to disposition by 1.5 to 2 months for cases lasting at least nine months.<sup>109</sup> The court manager then can maintain continuous control of cases through periodic case reviews. This proactive approach to controlling litigation enables courts to reduce case processing times. For example, faced with demographic shifts and a growing caseload, in the early 1990s the circuit court in Fairfax, Virginia, implemented a form of early court intervention called a structured delay reduction program.<sup>110</sup> Under this program, the court controlled the pace of litigation by checking in on the status of the case within 50 days after initial filing, holding a status conference within 100 days after filing during which the judge assigned the case to a differentiated case management track, and setting a limit on the date on which the trial may occur. As a result of these changes, the court was able to reduce its backlog to manageable levels by 1996 despite a growing volume of cases.<sup>111</sup>

The Phillips County courts can adopt an early intervention standard and tailor it to their specific needs. While the individual manifestations of an early intervention standard may vary based on a court's individual circumstances, courts adopting this standard share a common philosophy of proactively guiding cases from filing to disposition. All courts can take charge of cases at the beginning of the process by scheduling meetings with counsel to work out a timeline for the case. Depending on Phillips County's individual needs, the courts could build 50-day "check-ins" into the timeline in order to ensure that counsel are on track to be ready for the scheduled trial date. If the courts identify discovery as a common cause of unnecessary delay in their cases, they could require counsel to plan and establish parameters to limit discovery. Such tactics can help Phillips County proactively manage its caseload.

#### ***b. Differentiated Case Management***

Differentiated case management ("DCM") enables courts to structure their time more efficiently by managing cases according to their complexity. In a traditional system, courts treat all cases alike procedurally and generally address cases in the order they are filed. Through DCM, the court determines upfront the amount of attention each case is going to need and applies an appropriate timetable.<sup>112</sup> Some courts have pre-defined tracks based on whether the case is going to require conferences and hearings, or even

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<sup>108</sup> JOHN GOERDT ET AL., REEXAMINING THE PACE OF LITIGATION IN 39 URBAN TRIAL COURTS, NAT'L CTR. FOR STATE CTS, 55 (1991).

<sup>109</sup> JAMES KAKALIK ET AL., AN EVALUATION OF JUDICIAL CASE MANAGEMENT UNDER THE CIVIL JUSTICE REFORM ACT 52 (1996).

<sup>110</sup> See WILLIAM E. HEWITT ET AL., COURTS THAT SUCCEED: SIX PROFILES OF SUCCESSFUL COURTS 42 (1990).

<sup>111</sup> DAVID STEELMAN ET AL., CASEFLOW MANAGEMENT: THE HEART OF COURT MANAGEMENT IN THE NEW MILLENNIUM 3 (2004).

<sup>112</sup> *Id.* at 4.

more additional attention.<sup>113</sup> The Fairfax County Circuit Court mentioned above assigned cases to one of two tracks.<sup>114</sup> Cases presenting complex legal issues or that demand lengthy discovery periods were assigned to a “complex cases” track. For these cases, the track mandated a number of pretrial stages, including a mandatory settlement conference. However, the judge exercised discretion to set completion dates for each pretrial stage. This enabled the court to tailor the track to the specific complexities of the case. All other cases were assigned to a standard track with predetermined dates for each pretrial stage. Other courts’ experiences have demonstrated the benefits of adopting DCM. In the first year after adopting DCM for criminal cases, courts in Pierce County, Washington, resolved 88% of their drug cases within 90 days.<sup>115</sup> In the prior year, Pierce County courts had resolved only 11% of their drug cases within 90 days.<sup>116</sup> Similarly, courts in St. Paul, Minnesota, reduced their pending civil caseload by 94% within 8 months of adopting a DCM program.<sup>117</sup>

Phillips County can develop an effective DCM program in order to allocate court resources appropriately among routine and complex cases. The courts can identify their “typical” cases and establish a preset timeline that would be appropriate for typical cases. The courts then can implement and enforce this track for most of their cases, saving them time from developing case timelines on a case-by-case basis. Separately, the courts can identify kinds of cases that usually require a longer timeline and either assign them to a separate track for complex cases or evaluate their needs on a case-by-case basis. By determining these approaches ahead of time, the Phillips County courts can establish expectations of timeliness and efficiency among court participants and save court resources by preventing case-by-case timeline planning and unnecessary continuances.

### ***c. Fixed Trial Dates***

Setting fixed trial dates and limiting continuances is another way to allow parties and the court to operate more efficiently. Under this policy, the court establishes fixed trial dates at the outset and grants continuances only in exceptional circumstances. Fixed trial dates create expectations among prosecutors, counsel, and other trial participants that the trial will occur when scheduled. If the court fails to support this expectation by allowing trial dates to slip, case participants “will not be prepared” for trial and will continue to request unnecessary continuances.<sup>118</sup> Enforcing this expectation enables the court to eliminate unnecessary continuances and shorten the amount of time it takes to resolve a case.

The Fairfax County Circuit Court in Fairfax, Virginia, adopted this strategy to manage a growing civil caseload in the 1980s. The court implemented a fixed trial date plan in

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<sup>113</sup> *Id.* at 24.

<sup>114</sup> HEWITT ET AL., *supra* note 110, at 68.

<sup>115</sup> BUREAU JUST. ASSISTANCE, DIFFERENTIATED CASE MANAGEMENT, U.S. DEP’T OF JUSTICE 3 (1993), available at <https://www.ncjrs.gov/pdffiles/difb.pdf>.

<sup>116</sup> *Id.*

<sup>117</sup> *Id.*

<sup>118</sup> STEELMAN ET AL., *supra* note 111, at 6.

order to control the amount of time it took the court to process its cases. The plan required trials for all standard cases to occur within a year of filing and trials for complex cases to occur within 18 months of filing.<sup>119</sup> In order to meet these goals, the circuit court administrator proactively managed cases' progress.<sup>120</sup> The court exercised increased control over discovery, required status conferences to be held by the hundredth day after filing, and required the parties to hold settlement conferences.<sup>121</sup> These processes enabled the court to aim for fixed trial dates and limit the need for continuances. As a result, the court increased the percentage of civil cases resolved within one year from 50% to 78%.<sup>122</sup>

Given that the Phillips County courts are in session for only a few weeks each year, they may benefit greatly from a combination of adherence to preset trial dates determined by the case's complexity and strict limitation of continuances. By using fixed trial dates, the courts can identify the court session, date, and time at which the trial will occur. This predictability enables courts to rely on their calendar and schedule other court dates with greater certainty, increasing efficient use of judges' time. The courts can also adopt a policy of granting continuances only when absolutely necessary. The limitation of unnecessary continuances will enable courts to more accurately predict demand on and eliminate waste of court resources. By uniting these policies, courts like the Fairfax County Circuit Court have created a cascading effect where time saved on each case enables the court to more quickly address the next case. When cases are addressed predictably and efficiently, courts also capture fines and fees that are lost through out-of-court arrangements and reduce opportunities for abuse of the justice process among law enforcement, prosecutors, and defendants. By adopting fixed trial date policies, the Phillips County courts can address its ongoing problem with cases pending for long periods of time by resolving cases more quickly and enabling the courts to address new cases more promptly.

#### ***d. Data Collection***

Courts practicing case management often collect and analyze data in order to assess their ability to move cases through the justice system in a timely manner. Courts measure both the amount of time between filing and disposition and the size and age of their caseload.<sup>123</sup> Tracking these metrics enables courts to assess the current status of their caseloads and create realistic, achievable goals for improving court processes and procedures. These procedural improvements help courts reduce waste of their resources, shorten their dockets, and ensure that every case is resolved in accordance with the law. Many courts use CourTools, an online software application, to track their progress according to metrics including clearance rate, time to disposition, age of active pending caseload, trial date certainty, and reliability of case files.<sup>124</sup> Once caseflow

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<sup>119</sup> HEWITT ET AL., *supra* note 111, at 68.

<sup>120</sup> *Id.* at 71.

<sup>121</sup> *Id.* at 67.

<sup>122</sup> *Differentiated Case Tracking Program*, FAIRFAX CNTY., VA., <http://www.fairfaxcounty.gov/courts/circuit/dctp.htm> (last visited July 9, 2015).

<sup>123</sup> STEELMAN ET AL., *supra* note 111, at 83.

<sup>124</sup> COURTOOLS, <http://www.courttools.org> (last visited July 9, 2015)..



management standards are in place, courts can use CourTools to determine their current performance, the areas in which they would like to focus performance improvements, and performance targets. Taking these steps enables courts to monitor the effectiveness of implemented changes to their case management systems and make changes to their implementation of caseflow management training and standards as needed.

The Phillips County courts should consider adopting CourTools in order to evaluate their progress as they develop and implement case management strategies. CourTools will help the courts track changes in lengths of time to disposition and caseload size in an objective manner. As part of its overall adoption of caseflow management principles and strategies, the Phillips County courts could use data collection to assess where improvement is most needed and then track its improvement along objective metrics. Data collection also may help the courts identify areas of the justice process that are most vulnerable to abuse by prosecutors or defendants. Moving forward, the courts can also use data collection both to assess its improvement internally and as objective criteria in announcing its improvements to the community. Collecting and sharing data will also further promote transparency while may help increase public trust in the courts.

### **C. Final Recommendations**

Phillips County's chronic backlog of cases not only delays justice but it also enhances growing public distrust in the criminal justice system. The Phillips County courts would benefit from a systematic strategy aimed at integrating caseflow management into the courts' daily operations. This report recommends that the courts take the following steps:

1. Hire court managers for the Phillips County Circuit Court and the Phillips County District Court. If sufficient funds cannot be found for two court managers, the courts could discuss sharing personnel. The courts could also reassign current personnel if the personnel have sufficient capacity to take on new responsibilities.
2. Train personnel to acquaint them with caseflow management principles and strategies. Court managers should enroll in the Arkansas Court Manager Program. If personnel will be unable to attend the program, then the courts should consider enrolling the personnel in online certification courses. If these options are not financially feasible, personnel should review the free courses and materials available through NCSC.
3. Implement caseflow management standards. These standards should focus on enabling the courts to establish proactive control of cases through the following tactics:
  - a. Early case intervention, including requiring counsel to schedule preliminary hearings or status meetings and/or jointly present a discovery/case management plan to the court;

- b. Differentiated case management, including developing pre-determined tracks for “normal” and “complicated” cases and creating a system to assign cases to these tracks at the time of filing;
- c. Setting fixed trial dates and limiting continuances; and
- d. Using CourTools to track court performance data, including the amount of time between filing and disposition and the size and age of the court’s caseload, adopt CourTools.

### III. Judicial Ethics Recommendations

Trust in the judicial system is not solely a technical matter of training and establishing effective court processes. Judges must apply the law fairly and consistently if the law is to be respected and enforced. The Arkansas Code of Judicial Conduct has affirmed this, declaring that judges must discharge their duties “fairly and impartially.”<sup>125</sup> To protect this ideal of an impartial judiciary, the Arkansas Constitution protects a party’s right to disqualify a judge who has an interest in the outcome of the proceeding.<sup>126</sup>

In light of the importance of the judicial branch to maintaining rule of law and public trust, the potential for distrust of the judicial branch in Helena is particularly troubling. For example, Helena sitting Phillips County Circuit Court Judge L.T. Simes has been repeatedly sanctioned over the course of the last eight years, but he has retained his position on the bench.<sup>127</sup> Moreover, recent corruption scandals involving other Arkansas judges underscore the contribution that Arkansas’ judicial ethics rules and its system of judicial elections make to the perception that local courts are corrupt. This is not an abstract concern: lack of trust in the Phillips County judiciary contributes to the bigger problems with law enforcement that are described elsewhere in this report. As one Helena official noted, “[i]f [people] don’t trust the law, [they] don’t trust the prosecutors, [they] don’t trust the courts,” the law will not be widely respected and cannot be widely enforced.<sup>128</sup>

In order to bolster the integrity of the judiciary and the public’s trust in the rule of law, this report suggests three amendments to the Arkansas Code of Judicial Ethics. First, additional rules regarding recusal and disqualification of judges who have received campaign contributions from a party, lawyer, or law firm appearing before them should be adopted. Second, there should be restrictions on judges’ ability to appoint substantial campaign donors to administrative positions. Third, additional reporting requirements for judges receiving gifts should be adopted.

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<sup>125</sup> ARK. CODE JUD. CONDUCT R. § 2.2.

<sup>126</sup> ARK. CONST. 80 §12.

<sup>127</sup> Max Brantley, *Judge L.T. Simes Dodges Removal Again*, ARKANSAS TIMES (May 5, 2011, 9:31 AM), <http://www.arktimes.com/ArkansasBlog/archives/2011/05/05/judge-lt-simes-dodges-removal-again> (referring to a removal action against Judge Simes for improper communication with counsel in a case before him); see also *Ark. Jud. Discipline and Disability Comm’n. v. Simes*, 381 S.W.3d 764, 779 (2011).

<sup>128</sup> Interview in Helena-West Helena, Ark. (Mar. 27, 2014), notes on file with Mississippi Delta Project.

It is important to note, however, that changes to the Arkansas Code of Judicial Conduct must be approved by the Arkansas Supreme Court.<sup>129</sup> Therefore, it will be more difficult to make changes to the judicial code than it would be to pass a local ordinance or make other reforms at the city or county level. Since the recent passage of Amendment 80, which introduced non-partisan judicial elections, the majority of changes to the Code have been in the judicial campaign sections.<sup>130</sup> Because Arkansas has only rarely made changes like the ones recommended in this section, and such changes must apply statewide, altering the Phillips County justice system is likely to be a statewide battle.

#### A. The Problem of Judicial Elections

Arkansas is one of the many states in which judges are chosen by popular election rather than appointed by another branch of government.<sup>131</sup> This is true for judges at every level of the judicial branch: Supreme Court justices are elected to their seats in a statewide election, judges on the Court of Appeals are elected within the district they serve, and Circuit Courts are elected at the most local level.<sup>132</sup> Judicial elections in Arkansas are “non-partisan,” which means that judges may not run as a member of a political party,<sup>133</sup> and judges and justices may not run for non-judicial office.<sup>134</sup> They are not subject to term limits.

Many scholars have noted the tension between the ideal of an impartial judiciary and judicial elections.<sup>135</sup> Judges may be influenced by the effect that their decision in a particular case would have on reelection. One recent study of criminal sentencing practices found that Kansas judges increased incarceration rates for black defendants by 10% in election years.<sup>136</sup> Moreover, because elections are expensive, campaigning requires that judges and justices raise substantial funds—first to run for an initial seat, and then to run periodic reelection campaigns.<sup>137</sup> The same individuals donating to a judge’s reelection fund may—and, in fact, are likely to—then appear as a party or advocate before that judge.

Recent events in Arkansas validate the concern that campaign contributions may corrupt the state’s judiciary. On January 9, 2015, former Circuit Judge Mike Maggio pled

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<sup>129</sup> Howard W. Brill, THE ARKANSAS CODE OF JUDICIAL CONDUCT OF 2009, ARK. L. NOTES 1-3 (2009), available at <http://media.law.uark.edu/arklawnotes/files/2011/03/Brill-The-Arkansas-Code-of-Judicial-Conduct-of-2009-Arkansas-Law-Notes-2009.pdf>.

<sup>130</sup> See *id.* at 2.

<sup>131</sup> *Methods of Judicial Selection: Arkansas*, NAT’L CTR. FOR STATE CTS, [http://www.judicialselection.us/judicial\\_selection/methods/selection\\_of\\_judges.cfm?state=AR](http://www.judicialselection.us/judicial_selection/methods/selection_of_judges.cfm?state=AR) (last visited July 9, 2015); ALICIA BANNON ET AL, THE NEW POLITICS OF JUDICIAL ELECTIONS 2011–12, BRENNAN CENTER FOR JUSTICE, 38-45 (Appendix A), BRENNAN CENTER FOR JUSTICE (2013), available at <http://newpoliticsreport.org/content/uploads/JAS-NewPolitics2012-Online.pdf>.

<sup>132</sup> *Methods of Judicial Selection: Arkansas*, *supra* note 132.

<sup>133</sup> *Id.*

<sup>134</sup> ARK. CONST. 80 §15.

<sup>135</sup> See Erwin Chemerinsky, *Preserving an Independent Judiciary: The Need for Contribution and Expenditure Limits in Judicial Elections*, 74 CHICAGO-KENT L. REVIEW 133 (1998).

<sup>136</sup> KYUNG H. PARK, JUDICIAL ELECTIONS AND DISCRIMINATION IN CRIMINAL SENTENCING 3–4 (2014), available at [http://home.uchicago.edu/~kpark1/docs/Dissertation\\_Chapter2.pdf](http://home.uchicago.edu/~kpark1/docs/Dissertation_Chapter2.pdf).

<sup>137</sup> See generally BANNON ET AL, *supra* note 132.

guilty to accepting bribes – through campaign contributions – and allowing those bribes to influence his judicial decisions.<sup>138</sup> In particular, Judge Maggio admitted to reducing a \$5.2 million verdict against a nursing home because he had received campaign contributions from the nursing home’s owner.<sup>139</sup> The scope of the problem is not limited to Judge Maggio. Three of the seven Arkansas Supreme Court Justices—Rhonda Wood, Robin Wynne, and Karen Baker—have accepted campaign contributions from the same nursing home owner.<sup>140</sup> These events underscore the potential dangers that judicial elections create and highlight the importance of having reliable safeguards against corruption.

### ***B. Recusal and Disqualification Amendment***

If judges are biased in favor of or against one of the parties in front of her, they should not hear the case. Under the Arkansas Code of Judicial Conduct, judges are required to disqualify themselves (this is called “recusal”) when their “impartiality might reasonably be questioned.”<sup>141</sup> The main guiding document for judicial ethics is the Arkansas Code of Judicial Conduct, which establishes ethical standards that form the basis for disciplinary proceedings by the Arkansas Judicial Discipline and Disability Commission.<sup>142</sup> Under the amorphous standards provided, judges have a huge amount of discretion to decide whether a conflict is significant enough to trigger disqualification. The lack of concrete guidelines for judges, coupled with the Code’s reliance on self-policing, is not only a problem for judges who are actively compromised. It would be difficult for a judge to make an accurate assessment of her own impartiality. If a judge does not voluntarily recuse herself, a party may file a motion for disqualification to request that another judge hear the case. However, because a party may not even be aware of the conflict of interest or whether it is sufficient to justify disqualifying a judge, relying on litigants to police judges will likely result in under-enforcement. Additional concrete standards and reporting requirements to determine when judges should seek recusal, and when litigants can seek disqualification, would help address these problems.

Some states have adopted recusal rules that specifically address the situations in which a campaign donation poses a potential threat to the integrity of legal proceedings. Most of these rules were adopted within the last five years, following a U.S. Supreme Court case in which the Court strongly recommended that states pass their own laws governing judicial ethics and campaign contributions.<sup>143</sup> For example, in Tennessee and Oklahoma’s judicial codes, judicial recusal is required when a party has donated a high enough amount to a judge’s campaign that the judge’s impartiality might be “reasonably

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<sup>138</sup> *Former Judge Mike Maggio Pleads Guilty to Bribery During AR Court of Appeals Campaign*, ArkansasMatters.com (Jan. 9, 2015 5:51pm), <http://www.arkansasmatters.com/story/d/story/former-judge-mike-maggio-pleads-guilty-to-bribery/29616/Ym2F0QKFSEGrYuRxxU1OmQ>.

<sup>139</sup> *Id.*

<sup>140</sup> Benjamin Hardy and Max Brantley, *Mike Maggio pleads guilty to federal bribery charge*, ARKANSAS TIMES (Jan. 9, 2015 1:34pm), <http://www.arktimes.com/ArkansasBlog/archives/2015/01/09/mike-maggio-pleads-guilty-to-federal-bribery-charge>.

<sup>141</sup> ARK. CODE JUD. CONDUCT R. § 2.11

<sup>142</sup> ARK. CODE JUD. CONDUCT.

<sup>143</sup> *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868 (2009).

questioned” because of it.<sup>144</sup> Other states require recusal when a party has donated more than a specific dollar amount.<sup>145</sup> (The amount ranges from \$50 (Utah to \$2,500 (New York)).<sup>146</sup> In 2014, Alabama passed a law creating a “rebuttable presumption” of mandatory recusal where one party in the case raised more than a certain percentage of total contributions to a judge during an election cycle (10% for a Supreme Court Justice, 15% for a circuit court judge, and 25% for a district court judge).<sup>147</sup> ABA Model Rule 2.11(A)(4) calls for the recusal of a judge from a case when one of the parties in a case have contributed above a specific aggregate amount to the judge’s campaign.<sup>148</sup>

In contrast, the only Arkansas rule providing specific guidance for recusal when a party has donated to a judge’s campaign is an anemic comment to Rule 2.11 of its Code of Judicial Conduct. The comment notes that the fact that a lawyer or party contributed to a judge’s election fund “does not itself disqualify the judge” but acknowledges that such donations “may raise questions as to the judge’s impartiality.”<sup>149</sup> Thus, Arkansas judges have significant discretion when deciding whether to recuse themselves or grant a motion for disqualification, and they may be disinclined to acknowledge that their impartiality has been compromised.

Adopting a version of the Model Rule 2.11(A)(4) into the Code of Judicial Conduct would be one step in the right direction for Arkansas. In deciding upon this aggregate amount, Arkansas can look to other states for guidance. In some states, where the spending on judicial elections is relatively low, mandatory recusal can be required even where the donated amount was relatively low (Utah’s \$50 restriction is based on application of the ABA rule)<sup>150</sup> Alternatively, a more flexible approach, like the laws creating a rebuttable presumption of mandatory recusal when one party is connected to a major donor, could avoid potential “gamesmanship” or mandatory disqualification where it is unnecessary. In February 2015, Arkansas House Representative John Baine (D) introduced a bill, HB 1457, modeled after Alabama’s “rebuttable presumption” rule for high-percentage donors to a judge’s campaign.<sup>151</sup> The bill was withdrawn by its

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<sup>144</sup> Tennessee, *available at* [http://www.americanbar.org/content/dam/aba/administrative/professional\\_responsibility/tennessee\\_mjcj\\_final\\_authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/tennessee_mjcj_final_authcheckdam.pdf), and Oklahoma, *available at* [http://www.americanbar.org/content/dam/aba/migrated/2011\\_build/professional\\_responsibility/oklahoma\\_authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/2011_build/professional_responsibility/oklahoma_authcheckdam.pdf).

<sup>145</sup> Adam Skaggs and Andrew Silver, *Promoting Fair and Impartial Courts Through Recusal Reform*, BRENNAN CENTER FOR JUSTICE 9 (2011), *available at* [http://www.brennancenter.org/sites/default/files/legacy/Democracy/Promoting\\_Fair\\_Courts\\_8.7.2011.pdf](http://www.brennancenter.org/sites/default/files/legacy/Democracy/Promoting_Fair_Courts_8.7.2011.pdf).

<sup>146</sup> *Id.*

<sup>147</sup> H. R. 543, 2014 Leg., (Al. 2014).

<sup>148</sup> MODEL CODE OF JUD. CONDUCT R. 2.11 (2010), *available at* [http://www.americanbar.org/groups/professional\\_responsibility/publications/model\\_code\\_of\\_judicial\\_conduct/model\\_code\\_of\\_judicial\\_conduct\\_canon\\_2/rule2\\_11disqualification.html](http://www.americanbar.org/groups/professional_responsibility/publications/model_code_of_judicial_conduct/model_code_of_judicial_conduct_canon_2/rule2_11disqualification.html). See generally Howard W. Brill, *Campaign Contributions, Campaign Involvement, and Judicial Recusal*, 64 ARK. L. REV. 103 (2011) (discussing the implications of Arkansas Rule 2.11).

<sup>149</sup> ARK. CODE JUD. CONDUCT R. § 2.11 cmt. 4A.

<sup>150</sup> Skaggs and Silver, *supra* note 146, at 10

<sup>151</sup> H.R. 1457, 2015 Leg., 90th. Gen. Ass., (Ak. 2015).

author on March 12, 2015, but it is still available online.<sup>152</sup> If passed, this bill (or a similar one that creates limits on the amount that parties or their lawyers can donate to a judge's election campaign) would be a step in the direction of addressing judicial corruption.

It is also important to keep in mind that the ABA Model Rule and similar rules requiring dismissal based on the contribution amount reach only direct campaign contributions, not independent campaign expenditures. An amendment to Arkansas' ethics code should include these indirect contributions as well, to ensure that potentially corrupt donors and judges cannot sidestep the ethics rules.

### ***C. Administrative Appointments***

In addition to their substantial power in deciding cases, judges also have the power to make administrative appointments. Administrative appointments include potentially lucrative or powerful positions like special investigators, administrative law judges, or special fact-finders for a court. Just as the possibility of judges deciding cases based on campaign contributions is a risk to a well-functioning, impartial judicial system, the possibility of judges exercising their power to make appointments as a favor to campaign donors risks turning the judicial system into an extended system of patronage. If people are appointed to key administrative positions because of their donations instead of their reliability or skills, the appointed individuals may not be well-suited for the job.

Most state ethics codes, including Arkansas, have restrictions on the factors that a judge can consider in making such an appointment; they must "avoid nepotism, favoritism, and unnecessary appointments."<sup>153</sup> However, Arkansas judges are not restricted under the administrative appointments ethics rules from appointing substantial campaign contributors. Under ABA Model Rule 2.13(B), judges may not appoint campaign contributors or their families to administrative positions, if those contributors donated more than a specified amount in a given time frame.<sup>154</sup> Adopting a rule like this would help ensure that Arkansas judges could not hand out beneficial positions to their patrons. This is likely to reduce both the actual occurrence and public perception of corruption and induce more faith within the courts.

### ***D. Gift Reporting Requirements***

Campaign contributions are, of course, not the only method by which judges can be improperly swayed. The Arkansas judiciary made news in 2013, for example, when it was reported that an Arkansas Supreme Court justice, Justice Courtney Goodson, had

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<sup>152</sup> *Id.*

<sup>153</sup> ARK. CODE JUD. CONDUCT R. § 2.13.

<sup>154</sup> The Rule allows exceptions when either: (1) the position is substantially uncompensated; (2) the lawyer is selected from a rotating list of qualified and available lawyers, unconnected to their political contributions; or (3) if no other lawyer is available), MODEL CODE OF JUD. CONDUCT R. 2.13 (2010), *available at*

[http://www.americanbar.org/groups/professional\\_responsibility/publications/model\\_code\\_of\\_judicial\\_conduct.html](http://www.americanbar.org/groups/professional_responsibility/publications/model_code_of_judicial_conduct.html)

accepted a trip to Italy valued at \$50,000 from a lawyer who argued frequently in the Supreme Court.<sup>155</sup> The same concerns about judges adjudicating cases involving parties who donated heavily to their campaigns apply to judges adjudicating cases involving parties who give gifts: their impartiality may be compromised or, at least, called into question. Rulings from judges who are—or seem to be—indebted to one side in a legal dispute are unreliable and untrustworthy.

Gifts to judges are not subject to the same reporting requirements that political campaigns are; instead, judges are usually required under separate ethics rules to report the gifts they receive to the public. The ABA Model Rule 3.13 for gift reporting specifies how often and where a judge must report the amount and value of gifts received, as well as information detailing the nature of any activity for which the judge received compensation, the date of the activity, and a description of anything received of value.<sup>156</sup> In contrast, the Arkansas Code of Judicial Ethics only requires judges to report the value itself of gifts they received. They are not required to provide a description of the gift or corresponding information that verifies their report.<sup>157</sup> These loose reporting requirements allow actual and potential corruption to fly under the state's radar. Adopting additional requirements, such as the Model Rule 3.13, would provide better guidance for judges as to gift reporting, as well as give them more factors for consideration in determining the appropriateness of such gifts. Further, this reporting will provide more oversight and supervision of judicial behavior in regards to these gifts which will help to reassure the public that their judges are not up for sale.

#### **E. Final Recommendations**

Loose standard and limited reporting requirements in the Arkansas Code of Judicial Ethics provide opportunities for potential and perceived corruption within the court. In order to reduce these opportunities and promote optimal judicial behavior, it is recommended that Phillips County advocate for the following revisions:

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1. Adopt clearer, more stringent recusal and disqualification restrictions for judges, specifically those outlined in ABA Model Rule 2.11(A)(4). In regards to determining an appropriate aggregate amount, Arkansas Code of Judicial Ethics can look to other states for guidance;
2. Adopt an amendment to current administrative appointment regulations that restricts judges from appointing family members and campaign contributors. This amendment could incorporate a complete bar on appointing both categories, or, similar to ABA Model Rule 2.13(B), restrict the appointment of contributors who have donated specified amounts within a pre-determined time frame;

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<sup>155</sup> Reity O'Brien et al., *State supreme court judges reveal scant financial information*, CENTER FOR PUBLIC INTEGRITY (Dec. 4, 2013), <http://www.publicintegrity.org/2013/12/04/13808/state-supreme-court-judges-reveal-scant-financial-information>.

<sup>156</sup> MODEL CODE OF JUD. CONDUCT R. 3.13, (2010), [http://www.americanbar.org/groups/professional\\_responsibility/publications/model\\_code\\_of\\_judicial\\_conduct.html](http://www.americanbar.org/groups/professional_responsibility/publications/model_code_of_judicial_conduct.html).

<sup>157</sup> ARK. CODE JUD. CONDUCT R. § 3.13.

3. Adopt stronger reporting requirements for judicial gift reporting, as outlined in ABA Model Rule 3.13.

## **Conclusion**

Law enforcement and justice systems require public cooperation if they are to function properly. When members of the community see the police as out-of-touch, corrupt, or incompetent, they are less likely to report crimes or cooperate with law enforcement practices. When the court system is inefficient and unreliable, the deterrent effect of threatened prosecution is severely compromised. And, when the judicial system itself is seen as compromised, and judges' impartiality is in question, enforcing the rule of law is difficult.

This report attempts to address the problems of distrust and corruption in Helena-West Helena's public institutions. Some of the solutions suggested—such as implementing community policing and caseload management techniques—can be implemented quickly, while others—particularly the changes to the judicial ethics code—are longer-term goals that would require changes at the state level. Although reform presents challenges, Helena stands to benefit by strengthening community trust in its institutions.