First State of the Judiciary Address
Chief Justice Richard Neely, West Virginia Supreme Court of Appeals
Message to the Legislature
January 18, 1990

Mr. President Burdette, Mr. Speaker Chambers, distinguished members of the West Virginia State Senate and the West Virginia House of Delegates, distinguished Justices of the West Virginia Supreme Court of Appeals, distinguished Judges of the West Virginia Circuit Court, Ladies and Gentlemen:

Whenever I appear in this chamber for a ceremony I am overwhelmed by a sense of both nostalgia and pride. It was here, almost twenty years ago, that as a Member of the House of Delegates I held my first elective office; those years were a far greater education that I had ever received in a college or university. I also remember that the senators and delegates with whom I served during those years were among the highest quality individuals with whom I was ever associated, and the personal and political dynamics of the complex legislative process was, perhaps, the greatest challenge and most compelling experience of my life.

But the problems that confronted us in those halcyon days of economic boom and federal revenue sharing were as child's play compared to the problems that confront you now. Thus, it is with surpassing respect that the entire judiciary watches you undertake the demanding and unenviable task of rescuing West Virginia from the succession of tragedies and reversals that have daunted us relentlessly in the last decade.

In this bicentennial year of the Constitution of the United States, I proudly reflect upon the extent to which this legislature is part of the great crucible of democracy - a monument to humane and gentle government, characterized by accommodation and measured straining in opposite directions. Had I not served in this chamber, I would never have understood the full dimensions of the Founding Fathers' towering vision, nor would I have appreciated the complaints that the leaders in recently freed Eastern European countries have voiced that their societies hang in the balance simply because of their own lack of experience in democratic leadership. Although this legislature is regularly taken for granted, imagine what a contribution to the peace, order and prosperity of the world would attend the peppering of Eastern Europe with just two hundred alumni and alumnae of this body!

The problems that confront you as legislators also confront us in the judiciary. And, I fully understand that there are among you those who do not have a very high opinion of the courts. In this regard you faithfully reflect the attitudes of many of your constituents. But there are probably as few ordinary citizens and media commentators lined up to nominate you for the Nobel Prize in Government as there are to nominate us for the same honor!

Therefore, in this last regard, our two branches of government have much in common: We are both in the business of allocating scarce resources among competing ends. Regrettably, both of you and we are seldom called upon to decide between right and wrong; rather, we are most often called upon to decide between right and right - always an unenviable task leaving few satisfied customers.

All of the emotional, divisive, and contentious issues that you handle in the legislature, we must also handle in the courts. In the courts, as in the legislature, it is rich versus poor, developer versus environmentalists, capital versus labor, minorities versus majorities, women versus men, pro-choice advocates versus right-to-life advocates, industry versus agriculture, recipients of social services versus taxpayers, parents and children versus teachers and school boards, landlords versus tenants, and creditors versus debtors. Whenever you pass a statute that attempts to accommodate these competing interests, we are then required to apply that statute to specific cases, and just as you cannot satisfy most of the people even some of the time, neither can we.

Therefore, perhaps more than any other institution in state government, the judiciary understands your problems, and we rejoice in the opportunity this occasion presents to explore how together we might make the courts work at least a little better. This address is a first for this State, and I hope it reflects a new age of cooperation and communication between the judicial and legislative branches. I am particularly grateful for this opportunity to describe for those of you who do not work in the courts every day exactly what it is that the Supreme Court, the trial courts, and our related agencies do.

First, however, I would observe that the judiciary is acutely aware of the State's desperate financial straits and of your difficult, but courageous efforts last year to forestall our government's bankruptcy. Consequently, the judges of this State are surpassingly grateful for the generous salary increases that you gave to both the Supreme Court and the Circuit Courts last year.

And now, let me sketch for just a moment an outline of the unified court system of this State. The elected judiciary are divided into three levels: the Supreme Court of Appeals, the Circuit Courts, and the Magistrate Courts. There are five members of the West Virginia Supreme Court of Appeals, sixty circuit court judges, and one hundred fifty-six magistrates. The justices, circuit judges and magistrates are supported, in turn, by other personnel. The Supreme Court has personal law clerks, per curiam clerks, writ clerks, clerks of court, law librarians, and secretaries. Circuit judges have probation officers, secretaries, and occasionally law clerks and librarians. Each of the magistrates has a magistrate assistant, and each Magistrate court is staffed by a clerk and such deputy clerks as are necessary.

Consequently, the West Virginia Supreme Court of Appeals administers a judicial system in which there are a total of 819 employees consisting of elected judges and their supporting staffs. The judicial system has a unified budget amounting to $30,698,403 for the current fiscal year - a figure that represents only 1.7 percent of the General Revenue Budget. Yet, you must remember that the courts generate in excess of $8,000,000 a year in fines, regional jail fees, litter control receipts, and other special revenue accounts that fund programs at both the state and local levels.

The average percentage of the State Budget consumed by the judiciary in other states is roughly 3.5 percent; therefore, we are very proud of the fact that over the years we have kept both the size and the cost of our court system small. Even under Article VIII, which allows the Court to set its own budget in some areas, the Legislature still controls sixty percent of the Supreme Court's Budget. Out of 819 persons employed in the judiciary, the salary of 484 are set by

statute.

Across-the-board, in every area of judicial administration, statistics available for your inspection in the Administrator's office demonstrate that we run the most efficient and most economical court system in the entire United States. In the eight years since 1982, the total number of employees in the entire West Virginia judicial system, from janitors to judges, has grown by less than eight percent!

Our yearly appropriations increase substantially less than the rate of inflation, and this was the case during all the good years when money was readily available. In this regard, you will be pleased to know that our requested Budget for the next fiscal year is only three percent higher than our request last year, and this is primarily the result of your decision to raise salaries beginning last January 1. Furthermore, during this fiscal year we have fully cooperated with the Governor's request for a three percent spending freeze, and in the last ten years we have similarly cooperated in every other across-the-board spending freeze put into effect by the Governor.

The entire dimensions of the Court's parsimony, however, can be understood only by reference to the immense increase in work that the court system as a whole has experienced in the last seven years. The Supreme Court of Appeals continues to be one of the busiest courts of last resort in the United States. Over the past seven years, our total caseload has grown from a low of 1,159 cases in 1983, to a high of 2,037 cases in 1987. This past year 1,644 cases were filed in the Supreme Court, the second highest total on record.

In 1987, the most recent year for which statistics are available on appellate caseloads in other states without intermediate appellate courts, the total caseload of our Supreme Court was 70 percent greater, and the per-judge caseload was 130 percent higher than that of Nebraska, the State with the next highest total per-judge caseload. Yet we have never asked for an intermediate appellate court and no intention of doing so now or at any time in the future.

Furthermore, despite the tremendous volume of cases, there is absolutely no backlog on the West Virginia Supreme Court of Appeals. In fact, over the past two years the Court has disposed of more cases than were filed, clearing cases pending at the conclusion of the record year of 1987. And, as a general rule, almost all cases argued during one of our two statutory terms of Court, will be disposed of by order or opinion by the end of that term. This is nearly unheard of in any other state of the Union! To the extent that there is litigant dissatisfaction with the pace of justice in the Supreme Court, that dissatisfaction arises primarily from the statutory eight month appeal period between final judgment in the circuit court and application for an appeal in our court. We would ask you at this session to reduce this statutory appeal period from eight months to four months. This change is justified by the spectacular improvement in word processing and printing technology since the nineteenth century when the eight month appeal period was first put in place.

In the Circuit Courts, there were roughly 60,000 cases filed last year. Some of these, such as asbestosis cases, are very complex; others are routine. All of them, however, re- quire sufficient time and effort to dispose of them justly. Yet, again in general, through hard work and careful management, with very few exceptions, our circuit courts around the State are keeping up with

their workloads, and our courts are in no way backlogged in the same fashion as the courts of neigh- boring states. In fact, the efficiency and speed of our Courts has become so legendary across the nation that our reputation in and of itself is now adding to our routine burdens.

Litigants from out-of-state, who have the option of bringing cases in several jurisdictions, deliberately choose West Virginia in order to avail themselves of our superb and uncongested system. For example, in one northern panhandle county alone, roughly 1,000 Federal Employers' Liability Act cases were filed last year on behalf of claimants who have no contacts whatsoever with the State of West Virginia. I mention this only to demonstrate that while our Court System is far from perfect, it is so much better than the court systems of other states that consumers of court services vote for our System with their feet by choosing to litigate here, measurably improved. One reason for this is that we have retained good magistrates who, in turn, have been instrumental in training new entrants into the magistrate courts as each election replaces personnel.

Finally, the real workhorse of the West Virginia Judicial System is the local magistrate court. Last year, roughly 300,000 civil and criminal cases were filed in our magistrate courts, and this figure represents over 80 percent of all cases handled in all West Virginia Courts. Unlike supreme court justices and circuit judges, our magistrates are on duty literally twenty-four hours a day. Magistrate courts are fully staffed until 9:00 p.m. in the larger counties, and in every county on Thursdays, but even during nighttime hours at least one magistrate is responsible for coming to the county seat to pass on applications for search warrants, to handle domestic violence petitions, and to set bond. Magistrates are regularly available on Saturdays, Sundays, and holidays, and in addition to the sheer volume of cases that magistrates handle, and the odd hours at which they must be at their posts, our Magistrates are on the firing line with regard to all of life's low level, emotionally charged family and community disputes; magistrates are surrounded every day by the flotsam and jetsam thrown up by life's tragedies, and the job requires surpassing patience and a great deal of humanity.

Yet, our magistrates are not required to be lawyers. The increasing competence of our magistrate courts has been achieved through expensive training - amounting to a big piece of a law school education - provided by the Supreme Court. While at its inception in 1976, the West Virginia Magistrate System had little to recommend it over the old Justice of the Peace System that it replaced, during its fourteen years of operation, its professionalism has measurably improves. One reason for this is that we have retained good magistrates who, in turn, have been instrumental in training new entrants into the magistrate courts as each election replaces personnel.

During this Session, you will be asked to review the salary levels of the magistrates and their staffs. The Court asks that you give favorable consideration to a salary increase to these judicial officers and their staffs, who together process over 6,000 cases a week and, of all the judicial officers in the State, have the least attractive hours and working conditions.

Over the last twelve years, the Supreme Court has made a concerted effort to upgrade the quality of our probation officer corps. We are proud to say that today one-third of all of our probation officers hold master's degrees, a fourth are working toward their master's degrees, and nearly all

of our officers have completed at least several graduate courses. Furthermore, our probation officers have started home incarceration programs, special education programs for juveniles, restitution programs, and many other innovative rehabilitation programs without State funding.

Our adult probation officers carry an average caseload of 73 probationers per officer, and our juvenile probation officers carry an average caseload of 66 probationers per officer; these ratios represent roughly twice the recommended caseload. Even using our old and infirm facilities, it still costs the taxpayers of this State about $11,500 per year to incarcerate an adult felon, while the cost of supervised probation is only $1,300. The return to supervised probation is even more spectacular in the juvenile courts: While it costs roughly $27,000 a year on average to incarcerate a juvenile offender in a school with adequate therapeutic facilities, the cost to place a juvenile offender on supervised probation is only $800 per year!

In our probation system we have two serious problems: First, we are losing many of our better officers to the high-paying federal system and to other states. To ameliorate this problem, we have restructured our personnel system. Second, our juvenile probation system is understaffed and disorganized because part of the juvenile probation staff are under the control of the judiciary, while another part is under the control of the Department of Health and Human Resources. Currently 59 percent of juvenile probation officers are employees of the Department of Health and Human Resources.

Because of the financial crisis in the Department of Health and Human Resources, vacancies in probation positions under Health and Human Resources have gone un-filled for long periods, leaving both our troubled youth and the Courts who must deal with them without adequate probation staff. Furthermore, Department of Health and Human Resources officers face divided loyalties: Frequently, they must choose between providing probation services demanded by our judges, and providing other social services demanded by their superiors in the Department of Health and Human Resources.

To solve these problems, legislation supported by the Department of Health and Human Resources and the Court has been introduced this Session to consolidate juvenile probation within the Judiciary, and the Supreme Court asks that you give this legislation favorable attention.

In the whole judiciary, the greatest area of concern involves a new branch of the court system, namely the family law masters. Family Law Masters are supervised by our Ad- ministrative Office, but they are funded by the Department of Health and Human Resources. You established the Family Law Master System in 1986, in response to a Federal mandate to expedite child support and paternity cases. The system that you created involved the gubernatorial appointment of twenty-two family law masters throughout the State whose job it is to hear domestic cases and recommend final decisions to the circuit courts.

Roughly twenty-five percent of our circuit court system's caseload consists of criminal cases. Of the other seventy-five percent, half are domestic relations cases. These domestic cases are of acute importance to the litigants whose most vital interests - including such things as the award of child custody, the level of alimony and child support, and the distribution of marital property -

are at stake. In this State these issues are routinely decided before our family law masters. Although technically there is an appeal from the decision of the family law master to the circuit judge, in most cases the decision of the family law master emerges as the final disposition of the case either because the parties lack the money to hire lawyers to litigate further in circuit court, or because the circuit judge is satisfied with the master's decision. Thus, for all in- tents and purposes, our family law masters are domestic relations judges.

No area of law is changing faster than domestic relations. Masters over the course of their first term in office have become experts in this field, by virtue of their training and case experience. We want to build on this valuable base and retain those masters who have demonstrated their dedication, high standard of work and knowledge of the field. But the job insecurity of these important judicial officers, all of whom are up for reappointment by the Governor this year, substantially reduces the cost: benefit return from our training and oversight of the program.

In our effort to build an effective law master system, we have provided family law masters with extensive training in the law, hearing procedures and case management. In the last year masters' offices were equipped with personal computers and their clerk/secretaries trained in the use of this equipment and new case tracking software. This case tracking program, which is now being implemented throughout the state, was specifically developed to monitor domestic relations case flow and improve case management.

The Governor has assured me of his support next year for this legislation that would give family law masters job security during good behavior. This is desperately important to the integrity and competence of our domestic law system.

Many masters must continue to practice law so that they can easily return to private practice if they are not reappointed. Therefore, we ask that next year, in addition to addressing the reappointment process, you also establish masters as fulltime, judicial officers, increase their salaries by $15,000, and forbid them to practice law. The domestic docket in most places demands a corps of law masters who will devote more than a full-time, forty hour week to the dispatch of their duties.

Two major problems involving the law masters, however, can be solved this year. The first problem concerns the mechanism for funding the family law masters. Last year there were law masters' offices where the photocopiers were repossessed, and where the electricity and telephones were disconnected because the Department of Health and Human Resources lacked the money to pay the bills. Both the Department of Health and Human Resources and the Court ask that you transfer the funding responsibility for the family law masters from Health and Human Resources to the Supreme Court.

The second problem that you can solve involves caseload distribution. From our experience since enactment of the original Family Law Master statute, we have discovered that the regional boundaries do not appropriately reflect either caseload distribution or logistical problems presented by geography. A realignment of the regions should be done, if possible, at this session, and I would ask that four additional Masters be appointed for the areas where we have the greatest caseloads. However, if the details of re- alignment presents overwhelming political

problems, exact configuration is a matter of indifference to us. What we really need are four more masters because masters can be assigned among regions in the same way that we now assign circuit judges. Therefore, if you create masters anywhere close to where they are actually needed, we can make the system work.

This, then, leads me to another problem related to the masters but not actually involving them. This problem concerns child support and the Child Advocate program - a crucial part of our domestic law system that is in need of serious review. In 1986, you established the Child Advocate program as part of federally mandated support enforcement legislation that included creation of the family law masters. The Child Advocate Bureau was established as a separate division within the Department of Human Services to assist all applicants, both welfare recipients and non-welfare recipients, to determine paternity and to collect child support. Twenty-two lawyers were hired as child advocates to represent applicants in court for these purposes and to supervise the work of paralegals in child support cases. The twenty-two child advocate offices mirror the geographic regions of the family law masters.

Although the Child Advocate Bureau has improved child support collections since 1986, it has not been through the effective use of the advocates as litigating lawyers. The Bureau has relied on administrative remedies such as wage withholding and federal and state tax refund intercepts. The advocates in most areas of the State do not supervise the intake of cases and the legal decisions made on applicants' cases: Applicants are given misinformation, files languish, and cases still do not reach the court. This is hardly surprising because from its inception, the Child Advocate Bureau has been woefully under-funded and understaffed.

Yet, child support programs in many states provide effective representation and generate significant revenue. The Federal Government provides generous monies to the states to run child support agencies, including: (1) matching money to offset 66 percent of the cost of the program; (2) incentive or bonus money for cost-effective programs; and, (3) 90 percent funding for statewide computer systems (to plan, purchase hardware and soft- ware, and pilot programs). We have not made effective use of these federal dollars because we have not made the minimal state commitment necessary to get our program off the ground. In addition, West Virginia faces a potential loss of AFDC Funds if we do not pass legislation to comply with the Federal Family Support Act of 1988.

These are the cold, boring administrative and fiscal considerations that surround the Child Advocate Bureau; what should really be important to you, however, is that incompetence in collecting child support is exacting a devastating toll in human suffering and wasted lives. I cannot emphasize enough that our failure to provide an effective child support system is pressing down upon the brows of twenty five percent of our population - namely, indigent, divorced women and their children - a crown of thorns. We are crucifying an entire generation of children who will fail first in school and then fail in life because we are not providing the necessities for a minimally decent existence.

I would strongly urge you, then, to review the operation of the Child Advocate Bureau to insure that the Bureau places lawyers in positions to supervise the legal work on child support and paternity cases, that each office has the minimum staff and equipment to handle its caseload, that

the Bureau immediately draws down all of the available 90 percent funding to build a statewide computer system, and that the staff receive periodic training on uniform procedures and case management.

And, while we are on the subject of children, I would point out to you that West Virginia does not have a unified system for evaluating the needs of troubled children. In this session, legislation has been introduced to establish local, multidisciplinary teams to coordinate evaluations relying on community services to assist courts in determining the advisability and nature of long-term, out-of-home placements.

Community-based evaluations of children using local resources net more realistic and useful recommendations than the current system that relies on sending children to institutions for evaluations. Currently, in-state institutional diagnostic services cost between $1,300 and $4,000 per child, with much higher costs for children sent out - of- state. The average length of stay in these institutions for diagnostic purposes is between thirty and ninety days per child. Under the legislation presented to you, in-county services can arguably be provided at a fraction of this cost and in much less time.

Furthermore, and much more important, the use of community- based evaluations will help courts determine whether reasonable community efforts have been made; prevent a child's removal from his or her home - something that should result in an overall reduction in, or better use of, scarce state funds for institutional care at extremely expensive in-state and out-of-state schools. At least in concept, the Supreme Court supports well-conceived legislation that will help mobilize community resources be- fore resort is had to expensive institutional placements.

Finally, in this time of great public concern for ethics and integrity, you will be pleased to learn that the West Virginia Supreme Court has entirely reorganized the system for enforcing the Code of Judicial Conduct. In previous years, many of you have expressed concern that the Supreme Court named the members of the Judicial Investigation Commission and the Judicial Hearing Board, giving the appearance that friends of the court were the only persons to serve on these tribunals. Last December we changed the system of appointment to put the exclusive appointing authority for all members on both boards in either the governor or organizations entirely removed from the Supreme Court. The State Supreme Court currently spends $80,278 per year investigating and prosecuting ethics cases under our own complicated and exacting Code of Judicial Conduct.

Let me conclude now by reiterating how grateful we are that you have accorded the court system opportunity to share our concerns with you, and let me extend to all of you the Court's invitation to a reception in our courtroom sponsored by the Judicial Association immediately after this joint session. May I also extend to you our every good wish for a productive and successful session, and I earnestly pray that a merciful God will extend his blessings and protection to your deliberations this year.