State of the Judiciary
Message to the Legislature
Chief Justice Thomas B. Miller, West Virginia Supreme Court
January 17, 1991

Mr. President Burdette, Mr. Speaker Chambers, distinguished members of the West Virginia Senate and of the West Virginia House of Delegates, my fellow justices of the West Virginia Supreme Court of Appeals, other distinguished judges of the West Virginia judiciary, ladies and gentlemen.

I appear here today to deliver the second state of the judiciary address under circumstances that lead me to conclude that what I have to say pales in light of the war in the Persian Gulf. I had suggested to your leadership that, in view of this momentous event, if they wished me to forego this address, I would gladly do so.

They responded quite wisely that the affairs of this state must also continue to be re- solved and, in view of that fact, I begin my address, although I cannot help but bring to mind that line in Lincoln's Gettysburg Address where he said: "The world will little note nor long remember what is said here today."

Chief justices in 31 other states annually deliver a state of the judiciary address to their state legislatures. Last year the court approached your leadership to request that the chief justice be given the opportunity to begin that tradition in West Virginia. You graciously consented to that request.

I express to you on behalf of the judiciary our warm appreciation for this opportunity to share matters of mutual concern. As a token of our appreciation, I invite you to a reception in the Supreme Court courtroom immediately following this joint session.

Let me begin on an historical note by pointing out that our present unified judicial system is a direct result of action taken by you, the legislature, some seventeen years ago. By a joint resolution enacted in 1974, sweeping revisions were proposed to the judicial article of the West Virginia Constitution. These proposals were overwhelmingly approved by the voters at the November election.

Prior to this revision, the judiciary was fragmented and virtually unsupervised. The Supreme Court had its staff of law clerks and secretaries, its clerk's office, and a law library. It attended to its appellate work, but had virtually no administrative power over the judicial system.

At the trial court level, there was a hodge-podge of courts. We had circuit courts, as we do today, but we also had a variety of other special courts such as common pleas, criminal, and domestic relations. These had been created by special legislative acts through the years.

Our magistrate courts were termed Justices of the Peace. They received their pay from the fees collected from the losing party in cases that they heard. Based on a United States Supreme Court case, this fee system was found to be unconstitutional. This set the stage for the legislative

revision of this area of our judiciary.

The essence of the judicial reorganization amendment was to have a unified court system subject to the administrative supervision of our court, carried out by our administrative director.

The special courts were abolished and all judges became circuit judges. They and their support personnel, such as secretaries, probation officers, and court reporters, were placed under the judicial system. The same was true of the magistrates and their auxiliary personnel.

Prior to the judicial reorganization amendment, much of the cost of the system was paid at the county level. That cost became a part of our judicial budget, thus bringing about a substantial increase in the judicial budget at the state level.

I believe that your wisdom in creating a unified judicial system has been justified. We do have a more efficient system for delivering justice to the citizens of our state.

Our ability to establish administrative, as well as procedural, rules and regulations has brought uniformity to the operation of all courts. Through our administrative office and the reports it receives on caseload and other statistics, we are able to identify and solve problems.

The authority to assign judges and magistrates given to us in the Constitution has been a vital factor in expediting case dispositions. Last year alone, we assigned judges and magistrates on 383 occasions to circuits or counties other than their own as compared to 141 assignments in 1980.

Our system annually processes approximately 310,000 cases at the magistrate court level where there are 156 magistrates. At the circuit court level, our 60 circuit judges dispose of approximately 58,000 cases per year. At the Supreme Court, we hear approximately 1,620 applications for appeal, of which about 34 percent are accepted. We decide approximately 500 cases each year.

Our budget for the current fiscal year is $31.8 million. This figure represents only 1.7 percent of the general revenue budget. Approximately 65 percent of our budget is set by statute. This statutory control extends to include the salaries of all the justices, judges, magistrates, and magistrate court personnel.

Through the years, we have endeavored to be cost conscious. Our cost containment program perhaps has not endeared us to those in our system who have wanted additional personnel. However, this cost containment program has had its effect.

Recent statistics released from the Department of Justice show that the average amount spent per capita on judicial activities in the United States was $218. Four states exceeded $300 per capita. West Virginia was the lowest in the nation with only $89 per capita.

According to the study, West Virginia was also the lowest in another category- the number of people employed in the judicial system. The national average was 58 employees per 10,000

residents. West Virginia has only 35 employees for each 10,000 residents.

Let me now move from a general overview of the system to particular concerns for this year. Though to a somewhat lesser degree, 1991 is a turning point for our courts similar to 1974. Actions taken this year will shape our court system into the next century.

You are faced this session with the task of reviewing and making determinations that will affect the fundamental operations of circuit courts, the family law master system, and the magistrate court system - all of which provide day-to-day judicial services to the citizens of this state.

First, for the circuit courts, our constitution provides that the legislature can realign the judicial circuits only in the year preceding the election of circuit judges. All of our circuit judges will be up for election in 1992.

Although by statutory design the number of magistrates must be based on the population of the county, there is no such provision for the judicial circuits. The number and geographical distribution of circuit judges is a policy matter for your determination.

It is easy to look at the new population figures and conclude that there are too many judges in West Virginia. However, it is not that simple. What we have witnessed over the past five years is a very stable caseload. The circuit judges carry an average caseload of approximately 1,000 cases per judge. Thus, while the population is dropping, we have not witnessed a corresponding drop in case filings.

To underscore this point, Congress recently authorized two additional federal judges for the district courts in West Virginia because the caseload for the current federal judges exceeded 400 cases per judge.

Our circuit judges routinely handle twice that many cases without the benefit of law clerks. One reason West Virginia has the lowest number of judicial employees per capita in the nation is that our courts operate with a minimal staff in the face of a relatively high caseload.

Last year, the Supreme Court supported the addition of a judge in the eastern panhandle and in the 11th judicial circuit, which consists of Greenbrier, Pocahontas, Monroe and Summers counties. The need for judges in those two circuits still exists.

As you deal with the issue of circuit realignment and the number of judges, you will have the complete cooperation of the staff in our administrative office. The data it has gathered relative to the work of the circuit courts will be available. In addition, the judicial association has prepared a report on realignment that will be transmitted to the speaker and president for your information.

In connection with circuit courts, we also bring to your attention, as we have in the past, the juvenile probation officer problem. As you may know, most of the juvenile probation officers work for the Department of Health and Human Resources.

Unfortunately, because of budget constraints, as vacancies for juvenile probation workers occur

in the Department of Health and Human Resources, they are often not filled in a timely manner. This disrupts the juvenile court's probation program.

In order to change patterns of delinquency, juveniles placed on probation require intensive and thorough supervision. Often this is not occurring because of the lack of enough juvenile probation officers. We solicit your help in this area.

Our second area of concern is the Family Law Master System which the legislature created in 1986. At that time, the federal government requires each state to establish a new system to determine paternity and collect child support. To enforce this mandate, states were threatened with loss of the federal funds that support the aid to dependent children program. Under the legislative act, the judiciary supervises the family law masters who are lawyer-judges. The child advocate office and other support personnel are under the management of the department of health and human resources.

There has been an increase in the number of cases brought to family law masters and the courts involving child support. Substantial funds have been generated by pursuing delinquent child support payment. Our 22 family law masters also hear divorce cases, temporary support matters, and modifications to final decrees. This is a worthwhile system which is supported by the judicial association and the Supreme Court.

You may at this point ask what then are the problems? There are several:

The chief problem is that the program is scheduled to be closed down this year under the sunset law. If this is done, we would again face a loss of substantial federal funds for the aid to dependent children program. This would be a severe blow to a vital program in the Department of Health and Human Resources, an agency which is already experiencing financial difficulties.

Half of the cost of the family law master program is funded by the federal government and the payment of fees. But the program may run out of money before the end of the fiscal year because of a shortfall in the state appropriation. This can only add more stress to a program that lacks adequate funding for training, equipment, and facilities.

What is a possible remedy for the family law masters side of the system? By statute, the budget of the family law masters and their secretaries is paid from funds of the Department of Health and Human Resources. This same statute re- quires the Supreme Court to supervise them and to enter into rent agreements with the various county commissions for their quarters.

We pay their salaries and expenses, but are reimbursed by human resources. It would seem that a simpler arrangement would be to place these funds directly in our budget. As part of the judicial budget, we would be able to share equipment, training, and other resources that are common to the work performed by masters and other judicial officers.

We applaud the concern expressed by Governor Caperton in his state of the state address about the problems single parents encounter in collecting child support, and his call to increase funding for the child advocate office.

These additional resources should enable the child advocate office to obtain more orders and collect more support. But, for this to occur, child advocates must have access to hearings before family law masters.

In our busiest circuits there are already long delays in setting hearings before the masters and this problem will only multiply as child advocates bring more cases to court.

We ask you to review the numbers and geographic location of masters as well as the salary structure for both masters and their secretaries who have received no pay raise since their salaries were statutorily set in 1986.

This program needs your support in order to increase our child support recovery program and to better serve the needs of families as they resolve domestic disputes through our court system.

As our third major concern, we recommend that you address two matters of importance for our magistrate courts. The magistrates association will propose certain pay increases and a gradual phasing out of the two-tier salary system. Moreover, many of the support personnel in the magistrate system have their salaries set by statute.

They do not receive the regular cost-of-living pay increases that are given by the governor or by the legislature. The magistrates association has proposed modifications in this area also.

There is no doubt that the magistrate courts have improved dramatically in the past years. Of the 156 magistrates, 110 are now certified, after completing 48 or more classroom hours in our magistrate training program and successfully passing comprehensive examinations on the material covered.

When the magistrates elected in 1988 have the opportunity this year to complete their course of study and take their final test, we expect the number of certified magistrates to in- crease to about 140.

Magistrates are an experienced and dedicated group of public servants, as are magistrate court staff. We urge you to adopt the magistrates association salary proposals to improve the compensation of these 456 deserving public servants.

As to the number of magistrates in each county, the magistrate statutes provide for a self-adjustment on the basis of the 1990 census figures. This matter may not be resolved that simply.

Built into the magistrate statutes are special provisions exempting certain counties from losing magistrates because of population losses. While some counties will lose magistrates under the general population formula, others will be exempt.

These statutory exemptions protecting certain counties from losing magistrate court personnel may well create constitutional equal protection problems. This is a policy question that you, rather than the courts, should address.

Allow me to end on a positive note by pointing out that from an overall standpoint, we have a good judicial system. The annual disposition rate of cases in our system exceeds the national average. I have previously indicated that we operate the most cost effective judicial system in the nation. It returns through fines and fees approximately $16 million which is one-half of our current budget.

There is no substantial backlog of cases in our system, as has developed in other states. Furthermore, for many years West Virginia has had the lowest crime rate in the nation. We in the judiciary cannot claim the entire credit for the low crime rate, but certainly the prompt disposition of criminal cases is a contributing factor.

I should point out that you bear a large share of the credit for all of this. Had you not had the foresight seventeen years ago to create the unified court system, these results could not have been achieved.

Let me also express our gratitude for the legislation you enacted last year for the benefit of the administration of justice. Your statutory revision of the appeal period from the circuit courts to our court from eight months to four months will cut down on appeal delay. Prior to this reduction, we had one of the longest appeal periods in the English-speaking world, and, unfortunately, a number of lawyers took full advantage of it.

I also congratulate you on your record retention bill which on the surface may seem like a particularly boring piece of legislation. But it can have enormous impact at the county level where court records are preserved.

This past November, we approved a record retention schedule submitted by a committee composed of circuit judges and clerks, attorneys, and the director of archives and history. Over the years, it will provide to county governments substantial savings in the cost of record storage.

Another significant piece of legislation that will have a positive impact on the administration of justice and the budgets of state and local governments was the passage of senate bill 15. This authorized the use of home confinement as a condition of probation or as an alternative sentence to jail or prison.

This program will offer additional sentencing options for nonviolent criminals to our circuit judges, will relieve jail overcrowding, and will save county governments thousands of dollars a day in jail costs. The cost of electronic monitoring for a defendant on home confinement is approximately $8.00 per day while the present cost to confine that same prison in jail ranges from $35 to $55 per day.

These are just three examples of improvements that can be achieved when the judicial and legislative branches work together.

We are confident that this good relationship will continue and that you will act wisely as you address the issues that will have a significant impact on the delivery of judicial services into the

next century.

You have our pledge of complete cooperation as you deal with these issues. I have designated as our liaisons to the legislature our court administrator, Mr. Ted Philyaw, and my colleague, Justice Will Brotherton. They will honestly and forthrightly provide you any information or other assistance you request.

Finally, let me express a personal observation. I have been on our court f r fourteen years. During that period, I have had the opportunity to observe the day-to-day workings of state government. For must of this period, running this state has not been an easy job simply because of severe financial problems.

Of the three branches of government, yours has had the most difficult task during this period. For it is the legislative branch that bears the ultimate responsibility for enacting the budget and other laws designed to keep the state operational and meet the expectations of our citizens.

Yet, it seems to me that it is you who so often bear what Shakespeare called "The slings and arrows of outrageous fortune" by many that little understand much less fully appreciate what you do. Yet you must realize that there are those of us who know the good that you have done.

In this connection, I am reminded of the remarks made by the late William O. Douglas of the United States Supreme Court to a group of public servants, which I believe most appropriate to all of you. He said: "Being alive is not important, unless it gives an opportunity to participate in great endeavors or to occupy some vantage point from which others can be in- spired or directed. We honor those who have the courage to speak their mind and to make the Bill of Rights a living force. You have made equality for those less fortunate a positive force in our lives. As I view this group of warm hearted men and women - each with a bright conscience, I am greatly moved. You tower above the crowd. I could not be better blessed than with your friendship."

Thank you, ladies and gentlemen.