

State of the Judiciary  
Chief Justice Robin Jean Davis, West Virginia Supreme Court  
Message to Meeting of the West Virginia State Bar  
March 27, 1998

The best way to describe the State of the West Virginia judiciary in 1998 is to say it is in "a state of change." We are facing the most dramatic changes to our judicial system since the passage of the judicial reform amendment in 1974. The need for change in 1998 does not come from a court's mandate. It comes from society itself. Courts throughout the country are responding to society's demand for change. West Virginia courts must keep in step. Just as other state courts have done, we must make a serious evaluation of several issues affecting the judiciary in West Virginia.

First, we must evaluate the type and number of cases filed in our courts. Unlike the rest of the nation, we have not experienced an explosion of litigation and the subsequent backlog in our trial courts. The caseload for West Virginia trial courts has been relatively stable for the past decade. However, number is not the only determining factor in evaluating the workload and efficiency of our court system.

Although the civil caseload in our circuit courts has remained stable, the types and complexity of cases have changed. As the number of traditional civil cases has declined, the number of domestic cases has increased. In most of our circuits, domestic cases now make up about fifty percent of the civil case filings.

A second issue affecting the judiciary is the advance of science and technology. The pace of scientific and technological change is quickening. It threatens to engulf courts in factually and procedurally complex cases and in new issues that pose major problems of understanding for a legal and judicial system composed largely of lawyer-generalists and randomly selected juries. Technology also poses internal management problems for courts trying to equip and furnish courts with the best available means to improve the administration of justice.

A third challenge facing the courts is the end of the court monopoly and the rise of alternative dispute resolution. A number of litigants seek alternative dispute resolution that may or may not be court annexed. As all of you are aware, the role of mediation in the circuit courts has increased dramatically in the last three years. In other jurisdictions around the country, litigants in greater numbers are seeking dispute resolution services that are not court annexed. This choice may be influenced by a desire to increase the speed of case processing, a preference for subject matter expertise on the part of a mediator or arbitrator, or a desire to keep legal costs under control. This movement may be seen as a vote of "no confidence" in the courts and should be a concern to all of us who have dedicated our careers to the administration of justice.

A fourth issue impacting the demand for change in our system is the role of the juror and the jury system in a modern court structure. The jury system has become more visible in the media, leading to such criticisms as the stress placed on jurors, their loss of privacy, their passive role at trial, and the great difficulty of comprehending the voluminous and sometimes arcane evidence placed before them. A new round of reforms, directed toward the treatment of jurors and the

nature of their role, is on the way in other jurisdictions. They include consideration of non-unanimous verdicts, allowing jurors to take notes, to pose questions during trial, and allowing jurors to deliberate during the presentation of evidence. Pressures are increasing to critically examine the role of juries in our judicial system. West Virginia also must undertake this critical review.

The Supreme Court will take a proactive approach to these issues and pressure for change. It is always better to recognize a problem and address it before it becomes an emergency. In August of 1997, the Supreme Court established a Commission on the Future of the West Virginia Judiciary. The Commission is made up of legislators, representatives of the judiciary and executive branches, attorneys, business and labor interests, and others interested in improving the judiciary. The Commission's charge is to undertake a comprehensive review of the judicial system. This is the first review of this type since 1974.

The Commission is moving at a very fast pace. Its efforts, either already in progress or completed, include public forums, a statewide survey of citizens, exit questionnaires to jurors, written statements from the public, a random survey of eight hundred members of the bar, and other efforts to gain input from anyone who has something to contribute to the process. The initial results are both predictable and somewhat surprising.

It was not surprising to learn that the processing of domestic cases was the major issue of concern. It is interesting to note that both legislative leaders and staff in the governor's office advise us that the number one complaint involves the family law master system.

Some of the other issues identified, which were somewhat surprising, include the lack of uniformity in the court system, the need for an intermediate appellate court, and accountability of judicial officers.

The Commission's report is due on December 1, 1998, so that the legislature can consider its findings when it addresses the structure of the court system during the 1999 session. In response to the creation of the commission, the legislature passed three significant pieces of legislation.

First, and most importantly, it passed a joint resolution placing a constitutional amendment on the ballot this fall that, if the voters approve, will allow for the creation of specialized courts. Passage of the amendment will not mandate the establishment of specialized courts, but will give the legislature the flexibility to respond to the Commission's report in a comprehensive manner, including the establishment of specialized courts.

A second important legislative act was to extend the terms of the current family law masters for one year. The terms of all current law masters were to expire on June 30, 1998. The 1998 legislature extended their terms for one year so it could to address the family law master system at the same time as it will address circuit realignment and the findings of the Commission on the future of the West Virginia judiciary.

A third legislative act was the establishment of a Commission to study alternative dispute resolution in West Virginia. I will be chairing a commission that will study mediation in West

Virginia with a report to be filed in November so that this Commission's findings will be available for the legislature and the Commission on the Future of the West Virginia judiciary.

I want to publicly thank the legislature for putting us in a position to address the problems of the judiciary in a comprehensive manner in 1999. It is imperative that all three branches of government cooperate if we are to deal with the issues facing the courts.

While we have been working very hard to assure that the commission's efforts to address problems with the courts are successful, we have also been moving ahead on a number of other initiatives. I indicated earlier that the number of cases filed in our trial courts has been stable for the past ten years. The same cannot be said for case filings at the Supreme Court. 1997 was the busiest year in the history of the Supreme Court with an excess of 3,100 cases filed.

In response to this growing caseload, we have taken two very important initiatives. We are in the process of reorganizing the Supreme Court Clerk's Office and establishing an Office of General Counsel to implement a new case-management system for cases appealed to the court. I am pleased to report that our initial efforts are showing dramatic results. For example, if a case was appealed to the court in 1996 or early 1997, it could take as long as eighteen months or as few as ten months to get a decision as to whether the court would even hear the case. Under the new system, the court can make that initial decision within three months. During the next year, you will continue to see dramatic improvements in case processing at the Supreme Court.

Secondly, the Court has completed a review of the Rules of Civil Procedure, and has approved a number of amendments. Thanks to the hard work of a Committee chaired by Mr. Al Emch and the comments you submitted, I think we have made positive changes to these rules. These changes will become effective on April 6th.

The court also has approved for public comment Rules on Mass Litigation. The Rules on Mass Litigation are designed to address a clearly identifiable type of case in our circuit courts. Currently, there are approximately 21,000 civil cases pending in our circuit courts, and half of those involve mass litigation.

I am pleased to announce today another Supreme Court initiative that is long overdue. The Supreme Court has established the position of Information Services Director within the Administrative Office. Preliminary survey results from West Virginia University show that the public does not understand the judicial system and, not surprisingly, exhibits little confidence in the decisions of the judicial system. The judicial system in West Virginia has not done a good job of developing adequate public information or providing basic information to litigants using the system. This is not a "press position," but is a professional position that will play a fundamental role in preparing our court system to meet the challenges of the next decade.

Another important initiative is the video arraignment pilot program that will start in Kanawha and Cabell counties in April. The Supreme Court, with the support and cooperation of the governor, will conduct this program that will connect the court system with the regional jails and others desiring access to the courts through this new technology. While the video arraignment of prisoners has received the most publicity and is important as West Virginia completes the

regional jail system, the technology to implement this project has other exciting uses.

The courts are going to be connected by a new technology which allows the simultaneous transmission of voice, data, and video over fiber optic cable. This is going to allow us to connect our courts to save transportation costs, allow for the sharing of information, and improve the administration of justice that is only limited by our imagination and vision. One of the themes of my campaign was to improve technology in the courts and I am pleased to report to you that we are well on the way to achieving that goal.

A final initiative which I think is going to provide immediate benefits to you as practitioners in our courts and to our circuit judges is the Supreme Court's initiative to provide law clerks to our circuit judges. As I indicated earlier, the workload of a circuit judge is changing. We believe they need a law clerk's assistance to meet the challenge of increasingly complex litigation. Beginning June 1st of this year, we will employ ten law clerks in our busier circuits and will continue to add law clerks until every circuit judge has a law clerk.

I am also pleased to announce today that West Virginia has been chosen to conduct a model educational program for Federal and State judges. On April 21st there will be a joint meeting of federal judges, circuit court judges, and federal magistrates in Charleston to participate in an educational program conducted by the Federal Judicial Center. We have developed a very exciting agenda, including a session on how judges can make effective use of law clerks. If successful, which I am sure it will be, this type of program could become a model for the rest of the nation.

We have embarked on a major effort to review and evaluate the judicial system in West Virginia. As we consider changes to the judiciary, we must design a court system that will meet the needs of our citizens into the 21st century.

I stand before you today as the second most senior justice on the West Virginia Supreme Court of Appeals with fifteen months experience as a justice. However, I have spent fourteen years as a trial attorney which I firmly believe has given me a perspective that is very important in my role as Chief Justice. Coming to government service from that environment, I have a lot of ideas and a clear vision for the future of the judiciary. What we have to do is work together to develop a consensus for change. I hope we can move forward in a positive and cooperative manner to implement necessary changes to the judicial system in West Virginia.