

State of the Judiciary
Chief Justice Elliot E. Maynard, West Virginia Supreme Court
Message to the State Bar
May 12, 2000

Thank you, members of the West Virginia State Bar, for once again providing the Chief Justice with the opportunity to offer comments on the State of the Judiciary in West Virginia.

Billions of dollars in paper wealth disappear in a matter of hours when the stock market takes a sudden drop. Parents say goodbye to their child at breakfast. By lunch time, they learn that their child has been killed at school by another student.

These are truly roller coaster times. We live in a society that seems disposable and is sometimes very dangerous. Our society is constantly changing. In times of change, it is human nature to grasp at some semblance of order and control in our lives.

As I thought about how to describe the state of the judiciary in the year 2000 without just reciting impressive, but frankly boring, statistics, it occurred to me that the search for order and control usually brings people to the court system. Although like any other institution the court system must change with the times, we also must remain stable and dependable. We must be a place of refuge where people can find justice.

One of the best ways to make people feel in control is by helping them resolve their disputes on their own. That's why I'd like to first talk about our alternative dispute resolution programs. We presently have programs in what, in my opinion, are the two most important areas affecting our court system today - workers' compensation and family law.

A few weeks ago, the Supreme Court released its 1999 Statistical Report. Our Supreme Court once again set a record high in case filings. Last year there were 3,539 petitions filed in the Supreme Court. The number of petitions filed in 1999 either remained stable or declined in most categories, except for one.

No one should be surprised to learn that category was workers' compensation. Last year there were 2,306 workers' compensation filings, which represented over 65 percent of the total number of Supreme Court appeals filed in 1999.

West Virginia is one of only 10 states nationwide without an intermediate appellate court. We are one of only six states where workers' compensation appeals come directly to a state's highest court from the administrative agency. Our Supreme Court is by far the busiest appellate court of its type in the United States. Our justices have the second highest ratio of cases per justice in the nation. Only California has a higher ratio of cases per justice.

It doesn't take a mathematician to figure out that we need an intermediate appellate court to address the large number of workers' compensation and other administrative appeals. The

creation of an intermediate appellate court was one of the recommendations of the December 1998 report of the Commission on the Future of the West Virginia Judiciary.

Despite the need for an intermediate appellate court, in 1998, under the leadership of then-Chief Justice Robin Jean Davis, the Supreme Court created the Workers' Compensation Mediation Program. The program has been very successful. In 1999, 18 percent of the workers' compensation petitions the Court considered were dismissed or withdrawn. This was in large part due to the settlement of 410 cases through the Workers' Compensation Mediation Program. Mediation returns control to the parties, which fosters better labor-management relationships in the future;

Another way the court system is working to help people help themselves is in the family law area. The only contact that most West Virginians have with the court system comes in family court at the most difficult -and devastating time in their lives.

In West Virginia, most kids go home after school every day to a place that is safe, happy, and filled with love. Sadly, however, many West Virginia kids go home to places you and I can't even imagine - where they are beaten, abused, and terrorized, or simply neglected.

Everyone knows the name of Elian Gonzalez. He is a sweet-faced six-year-old who has become the subject of an international custody battle between his Cuban father and relatives in Miami. We are all transfixed by the human drama unfolding around this little boy. Ironically, hundreds of West Virginia children are going through the same agony and upheaval very single day in our courtrooms as their custody is fought over and decided. West Virginia's children don't have the same media attention, but the heartbreak and misery are the same. It is the first duty of our courts to reduce this misery.

Last year, the Legislature enacted some important changes to the family law master system to help address these issues. The Legislature created a new family court division within the circuit court of each county effective October 1, 1999. Under the new system, 33 family law masters now serve 24 family court circuits. Under the old system, there were only 14 full-time and 13 part-time law masters who served 17 regions. The Legislature also created the position of family case coordinator to help manage the new system's mandatory statewide parent education and mediation requirements. Previously, parent education and mediation had been voluntary. In 1999, we hired 20 case coordinators and additional secretary-clerks for each law master. This year, we will hire an additional 13 case coordinators, so that every law master has a case coordinator.

Parent education is now available in all 55 counties and has been very successful. Mediation is required if parents cannot formulate their own agreement on matters such as custody, visitation, and other child raising decisions. Every family law master office provides pre-mediation screening to determine if domestic violence, mental illness, or other elements would prevent parents from meaningfully participating.

If mediation is appropriate, the court will then designate a person or agency to conduct the mediation. Parents will pay for mediation on a uniform sliding scale based on ability to pay. One

of our court system's greatest challenges will be providing mediation for indigent parents. Many lawyers, social workers, and others have volunteered their services. Our court system, however, cannot expect volunteer mediators to meet all of our needs permanently, and is seeking grants and other alternate sources of funding.

Primarily due to the demands of the new family court system, we received about a 14 percent budgetary increase for fiscal year 2000-2001. Our current budget for fiscal year 1999-2000 is approximately \$59 million. Our budget for fiscal year 2000-2001 will be about \$67 million. That might sound like a lot of money. But, keep in mind that we have approximately 1, 100 employees and we operate and staff offices in all 55 counties. Ninety-one percent of our budget is for legislatively set salaries and other non-discretionary items.

Although our judicial branch represents one-third of state government, our budget uses only about two percent of the total state budget. Think about that for a moment. We operate one of the three branches of government on two percent of the state budget, and West Virginia has the second lowest crime rate in the nation!

The judicial budget always has been a source of controversy because we can constitutionally set our own budget. Once again, this past legislative session, the issue of the Legislature taking control of the courts was proposed. Once again it was voted down. I am proud that West Virginians can year after year rely on our court system being lean, efficient, and economical.

Our court system is accomplishing so much with that thin slice of budgetary pie. West Virginians can rely on the court system to constantly look at ways to improve. The Supreme Court continues to work to implement many of the recommendations of the 1998 Report of the Commission on the Future of the West Virginia Judiciary.

In 1999, we created a number of special commissions to deal with problems in our system. For example, the Commission on Mental Hygiene Reform issued a report in December 1999, which provided specific recommendations for the Legislature to change the current mental hygiene system from an adversarial system to a clinical model. In 2000, the Legislature came close to reforming the system in conformance with the report, and will revisit the issue during the next interim session.

The Court Technology Summit also issued a report in December 1999 that devised a plan to implement many of the technology related recommendations of the Futures' Commission. We have become a national leader in the use of ATM technology to conduct initial appearance hearings between prisoners in regional jails and magistrate courts. The system is currently operational in Kanawha, Putnam, Cabell, and Lincoln Counties. Eight more counties are close to being operational. Ultimately, the ATM system will be in all 55 counties in West Virginia and will be used for other court and non-court purposes.

Our Supreme Court Web site serves thousands of West Virginians, and is getting better every day. I am pleased to announce that the day will soon arrive, hopefully this year, that West Virginia will join a handful of states that broadcast live Supreme Court arguments over the Internet.

Additionally, Supreme Court task forces are looking at ways to better serve the needs of self-represented litigants, promote gender fairness and public trust and confidence in the courts, and improve jury instructions. We also are working with the Legislature to establish sentencing guidelines and improve facilities and security in courtrooms throughout West Virginia.

We are continuing to reach out to West Virginians in new and exciting ways. Since 1999, a version of the Chief Justice's monthly column in the State Bar magazine has been appearing in newspapers throughout the state. Now all citizens can have a better idea of what is happening in their court system.

The Supreme Court, working with circuit courts, bar members, the school system, and others in the community, has educated almost 800 West Virginia high schools students through our annual LAWS Project. LAWS, an acronym for Legal Advancement for West Virginia Students, allows students to study real Supreme Court cases in advance of the Supreme Court hearing the cases in the students' home circuit. Raleigh County hosted the first LAWS in 1999, and Harrison County hosted the second LAWS in 2000. The LAWS Project has been a great success, and we will choose a different circuit each year to host LAWS.

Our annual visit to WVU Law School to hear oral arguments and judge the Baker Cup Moot Court Competition has become a Supreme Court tradition. We also have started another traditional fall "road trip." This fall, I hope we will hear cases in my hometown of Williamson. Who says, "You can never go home again?"

Let me close by thanking you for the crucial role you play in making our courts a refuge in these uncertain times. You serve as a refuge to your clients and a voice of reason as they try to resolve their disputes. Many of you volunteer your time to various pro bono projects. You also volunteer for various join! bench-bar projects and serve on joint bench-bar committees to improve the court system. We are so lucky in West Virginia to have such a collegial relationship between our bench and bar, and to have such a superb bar.

It's easy to "lawyer bash," and talk about excessive litigiousness, greedy lawyers, and the shortcomings of our court system. I am not going to say these are not realities on some scale. But what I've seen on a much larger scale, is that people turn to lawyers and the courts to help them work out solutions in times of crisis. We have much more than a court system. We have a system of justice that is the world's envy.

On May 12, 2000, I am proud to say that the state of the West Virginia judiciary is strong. We have worked and are continuing to work hard to expand our dispute resolution programs; create a new family court system; meet the challenges of increasing caseloads in the Supreme Court, circuit courts, and magistrate courts; and better serve the bar and public through a number of special commissions and programs. We are keeping up with our need to change. But, by working with you, we will never stop being a place of refuge where people can find true justice.