

State of the Judiciary
Chief Justice Warren R. McGraw, West Virginia Supreme Court
Message to the State Bar Meeting
March 30, 2001

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.

When I thought about this speech, I asked myself whether there was an overriding issue of concern to our judicial system in the year 2001. To me, the answer seemed clear. That issue is the future of the family court system in West Virginia. I want our court system to make 2001 the year of the family. I want us to do everything we can to work with the Legislature to begin the process of creating a strong unified family court system.

Even as I speak, members of the Legislature are discussing the best way to meet the challenge and opportunity presented by the passage of the family court amendment in November 2000. The family court amendment, which voters passed by a 73 percent margin, allows the Legislature to expand the types of cases family law masters hear and elevate their powers to those of full-fledged judges. Supporters say the family court amendment passed because of concern that the law masters' limited jurisdiction and the need for circuit court review of most law master decisions extends the time the case is pending before the court.

Currently, we have 33 family law masters who hear such matters as divorce, child custody, visitation and support. Law masters will begin hearing domestic violence cases in which a final protective order is sought on September 1. Our 156 magistrates currently hear these types of cases. After September 1, magistrates will still hear emergency domestic violence protective order petitions.

Because domestic violence cases must receive the highest priority, other family law cases may be delayed. More delay is not what the public wants from a new family court system. I am very concerned about what will happen if the Legislature does not provide authorization and funding for more family law masters.

To succeed, the creation of a new family court system must be a gradual process. The workload we could shift from 65 circuit judges and 156 magistrates might overwhelm our 33 family law masters. We will have to make sure we can walk before we run.

We must have more family law masters, or family court judges, staff and appropriate facilities. Over the next few years we must gradually build the kind of system the voters envision - a system that encompasses more issues involving family law and provides a speedier resolution of those issues.

Although the creation of a unified family court system will be a gradual process, we have been successful in improving our current family court system. In 1999, the Legislature required that all family law master offices offer parent education and mediation programs by January 1, 2000. Previously, parent education and mediation had been voluntary.

Parent education is now available in all 55 counties and has been very successful. West Virginia's parent education requirement and shared custody presumption was even featured in a report on the "CBS Evening News with Dan Rather" in January.

Mediation also is available in all 55 counties. We have made great strides in providing funding for mediation for indigent parents. I would like to thank the State Bar for providing funding for mediation and volunteer mediators through the State Bar Mediation Referral Program.

I am pleased to announce that just this month, our family court system received over \$1.5 million in federal funds from the Department of Health and Human Services. We will use these funds for parent education and mediation. We received the grant because the Department of Health and Human Services wants to promote custody and visitation arrangements that provide substantial contact with both parents.

Our family court system also received a federal grant to promote a non-custodial parent's access to visitation with their children. The grant allows us to help fund "visitation centers" where non-custodial parents can have supervised visitation with their children or pick up their children for visitation in a safe, clean environment. We also are using part of the grant to fund a pilot project to help children with the trauma of divorce. Our first children's education program began early this year in Kanawha County.

Our family court system is also spreading the good news about the Children's Health Insurance Program, known as CHIP. In November, the Supreme Court unanimously ordered that all family law masters and their staff provide information and an application form for CHIP to every parent of a dependent child who has a case filed or pending in family court. Huge numbers of families, who may not know that their child is eligible for health insurance under CHIP, are involved in family court disputes. This is a wonderful opportunity to get this important information in their hands. The Supreme Court also has appointed a committee to increase general awareness of CHIP.

I am very proud of these and all of the advancements our family court system has made. I am confident that with support from the Legislature we can create a better family court system.

Next to the future of the family courts, I see technology as the second major issue this year for our West Virginia court system. Regardless of the type of law you practice, rapidly expanding technology will affect the way you practice law.

Our court system is working hard to keep up nationally with court technology. For example, we are installing a new statewide jury management system and are working on a system known as "e-filing," which will allow court documents to be filed electronically. We also are constantly working on expanding and improving our statewide computer network.

Our West Virginia court system also is a national leader in the area of videoconferencing technology. The technology we use for videoconferencing is called ATM technology. ATM does not mean, as you might think, automated teller machine. ATM stands for asynchronous transfer

mode, which is a technical description of how the system works. ATM technology provides a simultaneous video, audio and data link to parties in different locations. West Virginia is a national leader in the use of ATM technology to link prisoners in regional jails to magistrate courts for initial appearance hearings. Some of you might have even read an article about our court system's use of ATM technology in the December issue of "Fortune Magazine."

Last fall, we began the current phase of our Courtroom of the Future videoconferencing project. Currently, our courtroom videoconferencing reaches 28 counties. Our network extends from New Cumberland in Hancock County in the Northern Panhandle, to Charles Town in the Eastern Panhandle, to Huntington in the west, and south to Pineville in Wyoming County.

By summer, we expect to have a fully capable videoconferencing courtroom within an hour's drive of any courthouse in West Virginia. In the fall, we hope that every county that wants to participate in the system will have the capability to conduct hearings in their own courthouse that involve witnesses and litigants from any part of the state.

Videoconferencing for initial appearance hearings saves tens of thousands of man hours, and increases the security of our communities. Our reach and vision for the ATM system, however, extends far beyond this one use.

For example, recently, a historic first occurred in the West Virginia court system. In a civil trial in Judge Cummings' courtroom in Cabell County, a doctor in New York City appeared as a witness by videoconference. The attorneys conducted the examination and cross-examination of this witness entirely by videoconference. Videoconferencing avoided the expense and delay of transporting the doctor to and from Huntington.

This is only the beginning. The Supreme Court is drafting new rules that will allow the system to be even more useful. We are drafting rules to govern private attorneys' use of the ATM network to conduct depositions. In addition to saving travel time and expense, videoconferencing will protect the security of endangered witnesses, and the well-being of child witnesses. We are carefully drafting these rules to avoid prejudicing the rights of parties. As we have in the past, the Supreme Court welcomes your input on how to best use videoconferencing technology.

Videostreaming of Supreme Court oral arguments over the Internet is another technological advance that will soon change the way you practice law. This year, our Supreme Court will join a handful of state supreme courts nationwide that broadcast oral arguments over the Internet. We are testing the system internally, and plan to offer the system to the public this summer. At the appropriate time, we will provide you with detailed information on how to "tune in."

Our Supreme Court Web site at www.state.wv.us/wvsca continues to offer timely information to thousands of people and is getting better every day. Just this month, we added a service where you can subscribe through the opinions section on our Web site to receive by e-mail timely summaries of recently filed opinions. These summaries are organized by topic, with links to the full text opinion.

Primarily due to the cost of keeping up with technology, our court system requested about a 7.5

percent budgetary increase for fiscal year 2002. Our current budget this fiscal year is approximately \$67 million. Our budgetary request for fiscal year 2002 will be about \$72.3 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. About 90 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 current budget uses only about 2 percent of the total state budget. Think about that for a moment. We operate one of the three branches of government on 2 percent of the state budget. I am proud that West Virginians can year after year rely on our court system being lean, efficient and economical.

Our Supreme Court continues to be the busiest appellate court of its type in the country. We remain second only to California in the number of cases per judge in a court of last resort. Our Supreme Court's 2000 Statistical Report is being finalized as I speak. Although our number of filings has decreased by about 500 filings, primarily in workers' compensation, we still considered more matters than in 1999. In 2000, our Supreme Court considered over 3,000 petitions for appeal and issued substantive decisions in over 1,000 cases.

Our Workers' Compensation Mediation Program is still going strong. Since the program began in 1998, 1,135 cases, or 25 percent of all workers' compensation cases filed, were selected for mediation. Of those cases, 581, or 51 percent, were settled and removed from the Court's docket.

In addition to handling a high number of cases, West Virginians can rely on their 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 address areas of concern identified by the Future's Commission. 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. We expect the Legislature to pass a bill encompassing many of our Mental Hygiene Commission's recommendations this session.

Additionally, in 2000, Supreme Court task forces developed ways to better serve the needs of self-represented litigants, to promote gender fairness and public trust and confidence in the courts, and to improve jury instructions.

In November 2000, the Supreme Court received a \$70,000 grant from the State Justice Institute to fund projects recommended by our Task Force on Self-Represented Litigants. We are using the funds to create an informational video and brochure for self-represented litigants; train court workers to appropriately assist self-represented litigants; and create computer software for circuit clerks to collect data on the number and nature of cases brought by self-represented litigants.

Thanks to the work of two Supreme Court committees, the Court recently provisionally approved

proposed model civil and criminal jury instructions for trial judges to use at their discretion. These jury instructions are undergoing a six-month comment and provisional usage period. We realize we will have to regularly revise these proposed model jury instructions, and plan to form standing committees to keep these instructions up to date. The Court thanks all the lawyers who worked on these instructions. I urge all of you to review the model jury instructions, which are available on our Web site, and offer comments.

In addition to the work of Court commissions, we are continuing to reach out to the bar and the public. In 2000, for the first time, we released an Annual Report of the West Virginia Court System for 1999. Our annual report was very well received. We will continue to publish an annual report each year.

Since 1999, a version of the chief justice's monthly column in the State Bar magazine, "The West Virginia Lawyer," has been appearing in newspapers throughout the state and on our Web site. Now all citizens can have a better idea of what is happening in their court system.

This year, I also have created a Law Day Committee to encourage lawyers and judges to sponsor Law Day programs in their communities. Law Day is on May 1. Given the changes in our family courts, it's interesting that this year's national theme is "Protecting the Best Interests of our Children." Local bar presidents will soon be receiving information, and all of you can soon check out the special Law Day section on our Web site.

The Supreme Court, working with circuit courts, bar members, the school system, and others in the community, has educated about 1,100 West Virginia high school 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. We have held LAWS in Raleigh, Harrison and Cabell Counties. 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 Moot Court Baker Cup 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 Pineville. Who says, "you can never go home again"?

Let me close by thanking you for the crucial role you play in making our court system work. Many of you volunteer your time to various pro bono projects. You also volunteer for various joint 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.

Overall, our West Virginia court system is able to provide our citizens with the help they need in times of crisis. I believe we serve them well, and every day we are looking at ways to serve them better.

We are working to improve our family courts; become a national leader in court technology; manage a nationally high caseload; be sensitive to the special needs of our users, such as self-represented litigants and the mentally ill; and serve all members of the public well every day. We have much more than a court system. We have a system of justice that is the world's envy. On March 30, 2001, I am proud to say that the State of the West Virginia Judiciary is strong.