

State of the Judiciary
Chief Justice Larry V. Starcher, West Virginia Supreme Court
Message to the State Bar meeting
Summer 2003

As Chief Justice of the Supreme Court of Appeals, I'm pleased to have this opportunity to deliver the annual State of the Judiciary address at the West Virginia State Bar's Annual Meeting.

This past year has been difficult for many West Virginians and many Americans. It also was a difficult year for state governments and state judiciaries.

In some way, all of us have been touched by war, the threat of international terrorism, a slumping economy and governmental budget cutbacks.

West Virginia's state government, like state governments throughout the nation, is cutting back. In response to Governor Bob Wise's request, the West Virginia Supreme Court submitted a revised budget for the West Virginia court system for fiscal year 2004 that cuts \$8 million, or about 10 percent, from its initial budget General Revenue Appropriation Request. However, we only cut our budget by 4.4%. The other 5.6% of the 10% cut in our appropriation request came from our reappropriated funds (surplus). The Court also voluntarily reduced its current fiscal year budget by 4.1%.

Despite the need for belt tightening, I am proud to report that the Supreme Court, as the administrator of the West Virginia court system, is going strong. The West Virginia court system employs 1,135 elected officials and staff who provide an outstanding level of services to citizens across West Virginia. Our statewide court family has improved services to the bar, litigants and members of the public in several key areas.

For example, the West Virginia judiciary now has a new family court system. Enabled by a constitutional amendment, the family courts became courts in their own right in 2002 instead of a division of the circuit courts. I believe the new system is a significant improvement.

We now have 35 full-time family court judges who have authority to make final rulings on family law and related matters. Under the old family law master system, circuit court judges had to approve most family law master orders. As you know, this process was time-consuming. The main goal in creating new family courts was to provide better service to the public in domestic relations matters.

In 2002, family court judges ran in partisan elections for an initial six-year term. Subsequent terms will be for eight years, mirroring the terms of circuit judges.

The family court's jurisdiction is over matters of divorce, annulment, separate maintenance, paternity, grandparent visitation, and child custody and family support proceedings, except those incidental to child abuse and neglect proceedings. Family court judges also conduct final hearings in civil domestic violence protective order proceedings, and they may perform marriages.

There is a dual track appellate process for the family court. Both parties may agree to appeal directly to the Supreme Court; otherwise, circuit courts will continue to hear appeals of family court decisions until June 30, 2005. At that time, the Legislature will reevaluate the family court appeal process. Although the growth of our family court system has been a gradual process, our transition to the new system has gone well.

Through the use of \$75,000 in federal funds our family courts have covered the cost of mediation and custody evaluations for low-income parents. And, using another \$100,000 federal grant, we have either created or expanded visitation center services where non-custodial parents can have supervised visitation with their children, or pick up their children for visitation in a safe, clean environment.

Along with improving services to families, we also are improving services to self-represented litigants, many of whom are involved in family court proceedings. The Supreme Court received a \$70,000 grant from the State Justice Institute to create an informational video and brochure for self-represented litigants. The video and brochure are available at your local public library, circuit, family, or magistrate court, or from the Supreme Court. We have also trained and continue to train judges, court staff, circuit clerks and public librarians statewide to assist self-represented litigants. Over the past year, circuit clerks have been using computer software, purchased by the grant, that collects data on the number and nature of cases brought by self-represented litigants.

The Court is also making progress on how our court system responds to mental illness and addiction. In the 2001 and 2002 Legislative Sessions, the Legislature adopted several of the recommendations of our Supreme Court Commission on Mental Hygiene Reform. We want West Virginia's mental hygiene law to move from what has been a quasi-criminal model, and toward a medical model, that helps medical and social service systems provide more pro-active and preventive services to people in need. Of course, protecting due process remains crucial.

We expect to begin a pilot mental health court program in the northern panhandle, operating in connection with the Lee Day Reporting Center, with the help of a grant from the federal government. A grant of \$150,000 from the U.S. Department of Justice for this initiative is expected any day.

Still, I think we have a long way to go to fully improve how our court system handles problems related to mental illness. For example, West Virginia is the only state in the Union where we convene a full-blown hearing, just to get a person in crisis due to mental illness into short-term stabilization and treatment. I hope we can prod our legislators and local officials to support more change in the mental hygiene system, to remove barriers to getting help to sick people.

The mental health court system is part of a national trend to use what has been called therapeutic jurisprudence, or restorative justice. The truth is that the judicial and legal system can be a powerful force for healing, treatment and recovery. We simply must use the great power that the court system has to not just sanction punishment, but to use sanctions and rewards to help create change in people's lives, and to help families in crisis.

The Supreme Court is making the improvement of services to the public and State Bar members a high priority. Technology has been an important vehicle in better serving you. The West Virginia court system is a nationally recognized leader in court technology.

Many of you probably log on to our constantly expanding Supreme Court Web site at www.stale.wv.us/wvsca. Our Web site is very popular and contains a wide variety of court system information. Without leaving your computer, you can receive timely summaries of Supreme Court opinions and access the full text of opinions; check our Supreme Court calendar and docket; and watch and listen to Supreme Court arguments over our Web site.

And, by the end of this year we will have added the initial information in a Circuit Directory - each county will be highlighted with a picture of its Courthouse, along with other appropriate information. Our Web site has been recognized as a top state supreme court Web site in such publications as the ABA Journal and The Legal Intelligencer.

The Supreme Court also is working on providing all of our State courts with Internet access. We are working on creating a single database application that will allow any West Virginia judicial official instant access to all records, statistics and contacts in the West Virginia court system. The application will be compatible with systems used by the West Virginia Division of Corrections and other State agencies. Portions of our system will be accessible to the public.

Those of you who practice in magistrate court probably have seen our videoconferencing system that provides a simultaneous video, audio and data link between parties in different locations. We currently are using videoconferencing to allow prisoners in regional jails to appear in magistrate court for initial appearance hearings. Virtually every magistrate court served by a regional jail is now connected to the ATM system.

We also are using or working on using videoconferencing for many other court purposes, such as educational conferences, mental competency hearings, and proceedings in circuit and family court.

Technology is a wonderful way to bring the court to citizens, but nothing can replace human contact. One of the best things about being on the Supreme Court is having the opportunity to meet so many people from across West Virginia. The Court continues to travel to other areas of our beautiful State to hold Supreme Court proceedings. Since the fall of 2002, the Supreme Court has held proceedings in Madison, Summersville, and Morgantown at the West Virginia University College of Law, where we also judged the Moot Court Baker Cup Competition. In October 2003, the Court will hear cases in Philippi at the recently restored century-old Barbour County Courthouse.

I also have enjoyed staying in touch with you through my monthly column in The West Virginia Lawyer magazine, which the Supreme Court also distributes to newspapers across West Virginia. Several newspapers carry a version of this monthly State Bar magazine article as a regular monthly column.

This year, we are using the theme "2003 – Year of the Family." This theme points to several aspects of our judicial branch. One, so much of our judicial work revolves around family issues. Second, the altitude of inclusiveness and tolerance that we want to bring to our judicial branch is based on the recognition that we are all members of the human family, and we all have responsibilities and rights that our judicial system must promote and protect. Third, with the theme "Year of the Family" we can focus on the hundreds of people in our judicial branch family, each working to do their jobs well, and to serve the people of our State.

The court system continues to improve its physical facilities. Over the last 24 months we have established new or made substantial improvements in our facilities in 32 of our 55 counties. Recently, I had the pleasure of participating in the dedication of an excellent new court facility in Morgan County - where the court system and the county commission jointly created a new magistrate and family court facility from an old post office.

In improving our facilities we keep in mind several factors: quality service to the public, adequate space to conduct the courts' mission, and the safety and comfort of our staff. Morgan County is but one example of many fine projects.

I also believe that you should know that by August of this year each of our 65 trial judges will have on their staff a law clerk. This five year project will be fully implemented this year and may, in my opinion, do more to improve the quality of justice in West Virginia than any other single effort. Trial judges have unanimously applauded this project.

I would be remiss if I did not mention one of the most hopeful developments of the past several years in the area of our criminal sentencing options. In 2001 the Legislature passed the Community Corrections Act. This bill creates a statewide and local structure for alternative corrections, like day reporting systems, and alternative sentencing with an emphasis on restitution and community-based sanctions. Importantly, this bill provides for funding for these programs.

We know that West Virginia needs more alternatives to jail and prison incarceration. If current trends continue unchanged, the State's prison inmate population will grow from 4,544 in 2002 to 5,853 in 2007. And our prison population was only 2,100 in 1993. All this at a time when our population is both shrinking and aging. Something is askew here. We know that we cannot build our way out of our jail and prison bed deficit - rather, we have to save our secure facilities for people who need that level of supervision. For the rest, we can develop programs that save tax dollars and appropriately sanction offenders. Many of our courts are developing exciting alternatives, and I am glad that West Virginia is moving in the right direction in this area.

Our 2002 court system data has recently been tabulated. Case filings in the Supreme Court in 2002 show no change from last year – over 2,600 cases, of which nearly 1,400 are workers' compensation cases. Leaving workers' compensation aside, we grant review in about 23% of the petitions tiled, which is on the high side - nationally, the average is 13%. Our highest percentage in review is in the area of certified questions, where we take about half of the questions certified. In civil appeals we average 30-35%, and in the criminal cases we take about 20% of the petitions. In prohibition we average about 27%, and about 10% in abuse and neglect.

The number of workers' compensation cases presented to the Court has dropped substantially over the past few years - from 2,306 in 1999 to 1,380 in 2001, and 1,394 in 2002. And, we are continuing to experience a downward trend in the percentage of petitions granted for review. The Court granted full review to only 492 cases in 2002, and held for the claimant in 87% of these cases. This means that the Court "held for the claimant" in .7% - less than 1% of the over 56,000 claims filed.

Our total Supreme Court filings in civil appeals average about 600 petitions per year, and about 200 criminal appeals per year. In prohibition and mandamus, we see about 300 cases. Each justice on our court writes about 40 opinions in a year, excluding workers' compensation cases. Additionally, the Court hears another 2,500 matters ranging from applications for a stay, bond modification requests, disciplinary issues, bar admissions, petitions for rehearing's, and miscellaneous motions. All of this activity generates nearly 20,000 Court orders each year.

Our circuit court case filings actually dropped in 2002, but only because we pulled out family law cases and began a separate listing for those cases. Circuit court filings were in excess of 44,000 last year, and our new family court accounted for 35,000 - together an 11,000 gain over 2001. Included in the circuit courts' total cases are 6,824 mental hygiene petitions and 6,731 juvenile petitions.

Some other statistics that should be of interest come from the Public Defender Services. For Fiscal Year 2002, the single largest number of cases where PDS paid for legal representation was in the area of mental hygiene cases- 3,566 cases. Although the average cost of these cases is only \$120, there are so many that we spent \$432,000 on "defense attorneys" - plus well over a million dollars for mental hygiene commissioners. I repeat - in every state but West Virginia, certified doctors can certify a mentally ill person in crisis into treatment, and a hearing, if necessary, is held in 72 hours or so. I regard our current practice as wasteful, and I also don't think it does sick people any good to wait for hearings in shackles.

The second largest number of PDS cases is - there should be no surprise here - abuse and neglect, 3,420 cases in FY 2002. This is followed by juvenile cases, 2,895 cases, and domestic violence - 1,537 cases. Only 140 murder case, were handled through PDS in FY 2002, and they averaged \$4,600 each.

These 2002 statistics bear out one of the reasons that I have for calling 2003 the "Year of the Family" - family-related issues like neglect and abuse, domestic violence, and juvenile charges, continue to be a large part of our court business - on both the criminal and civil side.

In closing, permit me to say that the Supreme Court is lucky to have a good working relationship with our superb bar. Many of you serve on boards and committees that are essential to the efficient operation of our judiciary. Many of you have been active in other joint bench-bar projects. One example is our annual student educational program called LAWS, which stands for Legal Advancement of West Virginia Students. As part of LAWS, each year high school students are given the opportunity to study the judicial system and real Supreme Court cases in advance of the Court hearing the cases in the students' home circuit. With help from the bar, the

schools and the community, the court system has educated almost 1,800 students through LAWS since 1999.

The Supreme Court also appreciates your participation in Law Day activities on May 1, sponsored by the Supreme Court, local courts and the State Bar. In recent years, West Virginia's court system and legal community have dramatically increased sponsorship of Law Day activities to educate the public. This year we had, for example, outstanding programs at our State Capitol, and in McDowell and Monongalia Counties.

Many of you also serve on Supreme Court committees and State Bar committees that are helping improve the court system. For example, a State Bar committee, created by State Bar President Mike Aloi in 2002, is working with local circuit judges and magistrates to administer a pilot mediation program in the Monongalia County Magistrate Court.

You also serve on Supreme Court committees that are working to eliminate racial, gender and all other types of unlawful bias in the courts; that are studying perceived racial disparity in the juvenile justice system; that are helping self-represented litigants and people with mental disabilities who are involved in court proceedings; and that oversee admission of new lawyers and discipline of old lawyers, just to give you a few examples.

Without our dedicated bar, the success of the Supreme Court's many court improvement and public outreach projects would not be a reality.

I appreciate this opportunity to address you on the State of the West Virginia Judiciary. Despite the challenges of the past year and the challenges that we will continue to face, we have been able to serve our citizens well, and have found ways to serve them better. We have improved our family courts; continued our national leadership in court technology and addressed the special needs of our users. I am proud to say that the State of the West Virginia Judiciary is strong.