

State of the Judiciary 2005

Chief Justice Joseph P. Albright, West Virginia Supreme Court

Message at West Virginia State Bar meeting

May 6, 2005, at Radisson Hotel, Morgantown, West Virginia

I thank you for inviting the Justices and Circuit Court Judges to this annual Bench/Bar Luncheon and for inviting me, as Chief Justice of the Supreme Court of Appeals, to give here the 2005 assessment of the "State of the Judiciary" in West Virginia. We are very happy that it is now possible to schedule the spring Judicial Conference to immediately precede the annual meeting of the West Virginia State Bar and to have the Judicial Conference coincide with this yearly Bench/Bar Luncheon. Hopefully, this is the renewal of a tradition that will continue through the years to come.

Judicial System Administration

As you know, the Supreme Court of Appeals is charged with overseeing the administration of the statewide unified court system. The court system employs about 1,175 elected officers and support personnel, who-in my opinion-provide a high level of judicial services to citizens across West Virginia. Employee records indicate that the Court employs approximately 847 women (mostly secretarial/clerical) and 328 men (a high number of whom are elected), with 37 of the women and men who are Black, one is Native American, and one is Hispanic. Thus the minority employment rate of 3.3% of total court employees falls below the statewide minority population of 5.4%. As an equal opportunity employer, the West Virginia judicial system is committed to providing equal access and unbiased, non-discriminatory treatment to all: We obviously have work to do.

Human Resources Director

The Court is in the process of hiring a Human Resources Director to assist us in continuing to improve our recruitment, hiring and employment practices, including addressing equal pay and training opportunities for court personnel. To promote employee morale, we hope to promptly update the employee manual and initiate a system wide compensation study based on professionally recognized factors for determining compensation and benefits, with a multi-year plan for moving all employees onto a compensation and benefit plan implementing the results of the study.

Judicial Education and Employee Training

The Court maintains a heavy schedule of judicial education and employee training seminars. During 2004, the Court held continuing education conferences for circuit and family court judges, magistrates, mental health commissioners and Supreme Court and trial court law clerks. These conferences included rather intensive sessions on recently decided cases as well as open discussion of problems encountered by the judges, magistrates and commissioners. In addition, the Court held seminars for circuit clerks, family court case coordinators, magistrate assistants, probation officers, law enforcement officers, the media, students and the public. Some of the topics included assuring good treatment of the public, cultural competence, community

corrections, records keeping, ethics, diversity, time management, self-protection, well-being, and new court procedures and laws.

Benchbooks

In our continuing effort to assist the trial courts, the Supreme Court has overseen the development of two bench-books-one on Domestic Violence and another on Abuse and Neglect. Both benchbooks were compiled with the assistance of a "West Virginia STOP Violence Against Women" grant. Special training sessions were held to assist judges and magistrates in processing these types of cases. Another benchbook on "Sexual Violence and Stalking" is currently being developed.

Improvement in Court-Related Services

In our continuing effort to ensure equal access to West Virginia courts, our statewide court system has improved services to the Bar, litigants, and members of the public in several key areas. We continue to improve compliance with the Americans Disabilities Act by having available sign language interpreters, assistance listening devices, some braille materials, and by the counties making appropriate access accommodations in new or remodeled court facilities. In the last year, the Supreme Court co-sponsored a "Legal Interpreting Workshop," with the West Virginia Commission on the Deaf and Hard of Hearing.

We are also improving services to self-represented litigants, many of whom are involved in family court proceedings. In the last six months of 2004, about 16,183 people represented themselves in circuit or family court cases. Of those litigants, 14,093 were involved in cases of divorce, domestic violence, or other domestic relations issues. We have not yet begun to collect data on how many people represent themselves in magistrate court, but our best estimate is that about half of the cases in magistrate court last year involved at least one self-represented litigant.

To help the growing number of self-represented litigants, the Supreme Court used a grant from the State Justice Institute to open ten pilot "Legal Research Centers" in six public libraries, three circuit law libraries, and the Supreme Court Law Library. The West Virginia Library Commission collaborates with the Court on this project. As part of the Legal Research Centers' services, trained librarians assist the public with legal research questions. Patrons can use the LexisNexis legal database free of charge and have access to additional written legal information and research materials. An informational video and guide for self-represented litigants also are available at the Legal Research Centers, and every court and public library in the state.

The Legal Research Centers are located in: the Clarksburg-Harrison County Public Library; the Hampshire County Public Library; the Martinsburg-Berkeley County Public Library; the McClintic Public Library in Marlinton; the McDowell County Public Library; the Raleigh County Public Library; the circuit court law libraries in Cabell, Ohio, and Wood counties; and the Supreme Court Law Library in Charleston.

Mental Health Court Program

The Mental Health Court Diversion Program opened in the fall of 2003 and serves Brooke, Hancock, Ohio, and Marshall counties in West Virginia's Northern Panhandle. The voluntary program diverts non-violent criminal defendants with mental illness into a minimum one-year court-supervised treatment plan with frequent court appearances and the use of graduated sanctions and incentives to encourage success.

The program addresses, as is appropriate and available, offenders' education, employment, housing and other life needs, working toward stabilization and prevention of future criminal behavior. Offenders also participate in community service once stabilized. The program cooperates with the First Judicial Circuit's Community Corrections Program, the Lee Day Report Center, Healthways, Inc., the Department of Health and Human Resources, and a variety of Northern Panhandle organizations. Offenders who successfully complete the program have a significant reduction in jail time and have charges reduced or dismissed. Because of the program's success, the Supreme Court has approved an effort to obtain funding from additional sources to continue the program and expand its reach into Wetzel County.

Drug Court Diversion Program

Building on the success of the Mental Health Court Diversion Program, the Supreme Court has authorized an adult Drug Court Diversion Program in Brooke, Hancock, Ohio, Marshall, and Wetzel counties to begin on July 1, 2005. A three-year \$450,000 grant from the Bureau of Justice Assistance and local funds will pay for the program.

Only non-violent substance-abusing defendants may participate in the one-year minimum treatment program with mandatory drug testing and intensive judicial supervision using appropriate sanctions and incentives to encourage offender success. Offenders may be judicially supervised up to the length of their potential sentence and will be provided with rehabilitation and community service opportunities to address education, employment, housing and other life needs. The program will work with various organizations toward goals of reducing offender substance abuse and recidivism, and also work with the Mental Health Court Diversion Program to address offenders who have co-occurring mental health needs.

Magistrate Court Mediation Program

The Magistrate Court Mediation Program is another creative, apparently successful, alternative to traditional court proceedings. The program began in Monongalia County about three years ago. The Marion County Magistrate Court began its own mediation program in September 2004. As part of the program, magistrates refer 10 to 20 civil cases a month to mediation. The program has succeeded through the combined efforts of the Supreme Court of Appeals, the West Virginia State Bar, and the circuit and magistrate courts of Monongalia and Marion counties. Volunteer mediators include attorneys, law students who have completed the West Virginia State Bar's Basic Mediator Training, mediators from West Virginia University's Center for Dispute Resolution, and mediators from Ohio Valley College. There are plans to expand the program next year to Barbour, Harrison, Kanawha, Preston, Taylor and Wood counties, with the ultimate goal of reaching every West Virginia county.

Litigation in the Supreme Court of Appeals

The 2004 Statistical Report on Supreme Court of Appeals cases was finalized in late March 2005. There were 2,449 cases filed in the Court in 2004, 416 fewer than in 2003. This decrease was spread across most categories of cases, but a decline in workers' compensation filings accounts for nearly three-fourths of the decrease. Although filing rates remain high when compared historically, last year's filings fell to levels not seen since 1994 and revived a downward trend first observed about four years ago, which was interrupted in 2003. Nevertheless, the number of new petitions filed last year was still nearly double the number of petitions filed as recently as 1985.

The decrease in workers' compensation petitions may well be due to the administrative transition in the decision-making body at the Workers' Compensation Commission. Also, the Court held pending workers' compensation appeals while reaching its final decision in *Wampler Foods, Inc. v. Worker's Compensation Division*, the case that rejected challenges to the 2003 amendments to the statute and resolved the issue of which law applied to which issue in pending workers' compensation appeals. Except for that "holding" period, the number of workers' compensation case dispositions has far exceeded the number of filings since 1999 because the Court had worked hard to clear a substantial backlog that had developed because of an increase in the compensation filings in years prior to 1999. After resuming decisions in 2003, the clearance rate for these cases rose to 95% in 2004 and will likely increase even more in 2005.

With respect to the Court's decisions in all other areas, the statistics reveal that over the last five years, more than 50% of the Court's decisions have been unanimous and that the percentage of cases in which new points of law are announced has sharply and steadily dropped in the years since 1966, leading to a corresponding increase in the number of per curiam opinions.

Trial Court and Magistrate Court Activity

Caseloads in the circuit courts declined slightly last year, by a little over 900, to 46,890. In the 35 family court circuits, filings increased by over 1,100, to 36,251. There were over 12,000 divorce cases filed, over 14,000 domestic violence hearings requested and over 9,000 other domestic relations proceedings initiated in the family court system. Those numbers are staggering, indicating that troubled families in the State depend heavily on a competent, hardworking family court system. Proceedings in magistrate court exploded, moving from 347,000 cases in 2003 to almost 375,000 cases in 2004, including 167,000 motor vehicle cases. This is a busy court system.

Court Technology

In the course of making improvements in the court system's services to the public and State Bar members a high priority, technology has become an important vehicle for reaching that goal. The West Virginia court system has received national recognition for its court technology.

Many of you have probably visited our Supreme Court Web site at www.state.wv.us/wvsca. Our Web site contains a wide variety of court system information. Without leaving your computer,

you can watch and listen to Supreme Court arguments over the Internet; receive timely summaries of Supreme Court opinions by e-mail and access the full text of opinions; check our Supreme Court calendar and now, gain online access to all briefs filed in cases on the Court's argument docket. Over the past year, we have begun to add more information about special events, monthly observances, and your local circuit, family, and magistrate courts.

The videoconferencing system began as a pilot project in Kanawha County in 1998 to link prisoners in regional jails to magistrate court for initial appearance hearings. Every magistrate court served by a regional jail is now connected. We now are using videoconferencing for many other court purposes, such as educational conferences, mental competency hearings, and proceedings in circuit and family court. The West Virginia Supreme Court has obtained almost \$7 million in grants from Verizon and the West Virginia Legislature for videoconferencing equipment, infrastructure and training.

The Supreme Court also is 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. If we are successful in implementing this huge project, the database will be compatible with systems used by the West Virginia Division of Corrections and other state agencies, with portions of the database accessible to the public.

We are now in the last phase of implementing a first-time ever Adult Probation Tracking and Case Management Database. It will provide a growing information system on all adults entered into the probation system in West Virginia and will provide for historic tracking of the probationers' residences, jobs, community service, legal history, fines assessed and paid, and restitution ordered and paid.

For the first time in the history of West Virginia juvenile probation, probation officers are using a new assessment tool to help them identify the legal, social and treatment needs of juveniles when a judge orders a pre-disposition report.

Finally, in an effort to decrease the number of out-of-state placements of juveniles for treatment, we have invited the West Virginia Department of Health and Human Resources to join with the Court in creating a location on our Web site where the judges needing placement information can locate suitable available beds at in-state locations that might be just as effective and more economical than out-of-state placement. I am sorry to report that at this juncture bureaucracy is winning out and the best commitment we can get from the Department is that they are, and I quote, "conceptualizing" about the program. Stay tuned. I do not intend to take that answer.

Outreach Programs

Technology is a wonderful way to bring the court to citizens, but nothing can replace human contact. Therefore, the Court continues to travel to other areas of our beautiful state to hold Supreme Court proceedings. It is a wonderful way for us to meet so many people from across West Virginia.

Since the fall of 2004, the Supreme Court has heard cases in Beckley and Morgantown at the

West Virginia University College of Law, where we also judged the Moot Court Baker Cup Competition. Last month, we heard cases in my hometown of Parkersburg as part of our seventh annual LAWS educational program for high school students. As part of LAWS, high school students 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 2,625 students through LAWS since 1999, including 400 students last month in Parkersburg.

In recent years, West Virginia's court system and legal community have also dramatically increased sponsorship of Law Day activities, which educate the public about their rights and responsibilities under the law. We celebrated Law Day just a few days ago at the State Capitol, where I had the pleasure of presenting the Liberty Bell Award to attorney Jane Moran for her work assisting children and low-income litigants and promoting equal access to the courts. On hand to celebrate Law Day were Governor Manchin and several executive cabinet members, legislators, heads of state agencies, state employees, educators, students, the public-and members of the State Bar. This year's Law Day theme was "The American Jury: We the People in Action."

Last year's Law Day theme was "Equality by Law: Brown v. Board at 50," celebrating desegregation in public schools. Over the last year the Court has sponsored seminars and performances around the state focusing on a landmark racial discrimination case brought by J.R. Clifford, West Virginia's first black attorney. These programs sparked a long overdue installation at the WVU College of Law, in February of 2005, of a memorial plaque honoring J.R. Clifford made possible by members of various state bar organizations and other devoted individuals.

Some Problems on the Horizon

The very substantial costs associated with placing a person in the regional jails and the equally heavy cost of incarcerating felons, now estimated to be over \$20,000, per person, per year, is eating away at county commission budgets and eating a big hole in the state budget. In 2003, this state spent almost \$25 million more on incarcerated felons than it spent on the entire court system. After experiencing almost a 167% increase in the incarcerated felon population from 1996 to 2005, the Department of Corrections is expecting still another 40% increase in that population over the next 10 years. Meanwhile, our "parole granted" rate lags far below national norms. Why? To what end? The executive, the legislature and the courts should address these two problems thoroughly and dispassionately.

Another set of lurking problems include the under-compensation of our court-appointed counsel; the ever increasing cost, now borne by the court system, of providing guardians ad litem in several classes of cases; the ever-growing problem of financing mental health hearings; and the limited resources the state has to provide legal aid in civil cases. While some help may flow from the latest act of the Legislature which provides some opportunity to delay or avoid expensive mental health hearings in some situations, all of these areas of court-related activity must be addressed in the near future if we are to realize our goals of properly serving the poor and disadvantaged, operating an efficient court system and providing fair hearings in all of the situations these problems touch.

Finally, I note that your organization is now studying judicial selection methods. A much more pressing problem arises from the famous decision in *Republican Party of Minnesota v. White*, and its likely progeny. In that decision, the Supreme Court of the United States erected major barriers to states regulating the conduct of judicial candidates in the selection process - whether candidate for appointment or candidate for election. That case, read literally, invites candidates to speak on issues upon which they may be expected to rule. The remand of the case to the circuit court of appeals promises to bring about further limitations on the states' power to control financing. Together with the failure of the states to test whether their campaign finance laws limit the conduct of so-called "527's" in judicial campaigns, these present and impending changes promise to be far more threatening to an independent and fair judiciary than do the issues of whether judges are appointed or elected or elected on a partisan ballot. The Bar - and, more importantly, the public - has been ill-served by these developments. The Bench and the Bar ignore the implications of these present and impending changes at great peril to anything remotely resembling an independent, fair judiciary.

Court Budget

The big news concerning the West Virginia judiciary is that the West Virginia Legislature recently passed a bill that raises the salaries of Supreme Court justices, circuit judges, family court judges, and magistrates. Before the bill passed, West Virginia justices' and circuit judges' salaries were 48th and 51st in the country. Our family court judges and magistrates trailed their colleagues in other states. The bill raised the salaries of Supreme Court justices from \$95,000 to \$121,000 and the salaries of circuit court judges from \$90,000 to \$116,000. Salaries of family court judges were increased from \$62,500 to \$82,500. Magistrate salaries were increased by \$10,000. Salaries of magistrates in larger counties were raised to \$50,000 and in smaller counties were raised to \$43,625.

Wednesday the Governor signed the bill which will be effective July 1. We deeply appreciate the support of the State Bar for this bill. I particularly thank Charlie Love and the Board of Governors for their outspoken efforts to gain the Governor's approval of the bill. It would not be law today without that support and the support of countless citizens from every walk of life. I thank Senate President Tomblin and Speaker Kiss for their support and leadership and thank Governor Manchin for signing the bill.

This legislation enables West Virginia to retain quality people in judicial positions and to attract quality people to run for these offices.

With regard to the Court's budget generally, the West Virginia court system has a long history of being conservative with its budget. We run our courts on a current budget of about \$81 million. In recent years, our court system budget, being one of the three branches of state government, has remained around only 2% of West Virginia's total state general revenue budget.

Along with providing excellent public service, our circuit, family, and magistrate courts also generate money. The Supreme Court has completed a project in 54 out of 55 counties that allows magistrate court defendants to pay court costs, fines, forfeitures, and fees by credit card. Allowing magistrate court defendants to pay by credit card is a win-win situation. The magistrate

courts have increased collection rates and defendants have increased convenience.

More and more, the Legislature is looking to the court system to assess and collect fees for a wide range of government activities. We estimate that our court system handles \$70 million a year. We forward substantial amounts of that money to the State Treasurer's Office and county governments.

As I said to the legislative committees preparing the budget for this upcoming year, the West Virginia judicial system is truly efficient; it is one of the best bargains in government.

Current Facilities Improvement Plans

Currently, we have begun a process of furnishing each of the family courts in a manner appropriate to their status as domestic relations courts of record. We are also refurbishing the 55 magistrate courts and seeking the cooperation of each county commission to upgrade any facilities that do not meet clear standards established by the Court, to assure that the facilities and furnishings convey the sense of dignity appropriate to such busy and "people-centered" courts. It is expected that these two projects will take three or so years to complete in all counties.

Conclusion

I am happy to say that the Supreme Court enjoys a good working relationship with our State Bar. All of us enjoy staying in touch with you through our column in the West Virginia Lawyer magazine, written during each Chief Justice's tenure. The Court's public information officer also distributes the column to newspapers across West Virginia.

Many of you have been active in joint projects with the Court, such as the LAWS program and Law Day celebration I just mentioned. Many of you also serve on Supreme Court and State Bar committees that continue help to "raise the bar" for improvements in the court system, including working to eliminate all types of unlawful bias in the courts, studying perceived racial disparity in the juvenile justice system, assisting self-represented litigants, and improving court procedures in abuse and neglect cases. Without your dedicated assistance and service of the Bar, the success of many of the Supreme Court's improvement and public outreach projects would not be a reality.

Despite the challenges that we continue to face, we - Bench and Bar - serve our citizens well. Together we can do more as we find ever better ways to serve them. But for now, I am proud to say that the State of the Judiciary in West Virginia is strong, and open to all.