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Commission on The Future of the West Virginia Judicial System

Final Report

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FOREWORD

The thirty-eight members of the Commission on the Future of the West Virginia Judicial System represent a broad spectrum of West Virginians. Some of us are attorneys, business leaders, or labor leaders. Others are leaders from the executive, legislative, or judicial branches of State government. Some head civic organizations and educational institutions. We vary by age, sex, race, educational background, politics, the area of the State we call home, and in many other ways.

Despite our differences, we are united by our concern for the citizens of West Virginia and our belief that West Virginia's court system must change to meet the demands of our changing society and to better serve the citizens of this great State.

When the Supreme Court of Appeals appointed us to serve on this landmark Commission in August 1997, we dedicated ourselves to conducting a comprehensive review of the state of West Virginia's judicial system while keeping in mind the far-reaching implications of our task. We engaged in extensive information gathering. We held nine public hearings across West Virginia; surveyed all judicial officers and court personnel; distributed exit questionnaires to petit jurors; surveyed a random sample of State Bar members; conducted a statewide public opinion poll; and accepted submissions through the mail and E-mail. We thank the many West Virginians whose thoughtful contributions broadened and enhanced the recommendations in this report.

The Commission reached consensus on the vast majority of the recommendations found in this report; the only written dissent concerns the selection of judges. Some of these recommendations are directed to the Supreme Court of Appeals, others will require legislative action, and still others will require a coordinated effort between all three branches of government.

It is our hope that this report will be much more than a scholarly overview of West Virginia's court system. The implementation of the recommendations contained within this report will help create a system of justice that is accessible to all, timely in its decision-making, fair and equal in its treatment of those who use it, and accountable to the State's citizens.

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CHAPTER 1

THE HISTORY

> *Laws and institutions are constantly tending to gravitate. Like clocks, they must be occasionally cleansed, and wound up, and set to true time.*
>
> --HENRY WARD BEECHER

The Supreme Court of Appeals of West Virginia appointed the Commission on the Future of the West Virginia Judicial System in the Fall of 1997 to conduct a comprehensive review of the State's court system. Citing the lack of a thorough, critical review of the system since the "Judicial Reorganization Amendment" of 1974 and the changing nature of the problems that the court system was being asked to address, the Supreme Court's Administrative Order of October 2, 1997 established the Commission and directed that it:

First, examine the trends, both internal and external to the court system, which are affecting the role of the court as an institution and the delivery of its services;

Second, assess the performance of the court system in light of established standards of fairness, accessibility, timeliness, and accountability;

Third, identify the strengths upon which to build, as well as the obstacles to overcome, to enable the court system to improve its performance;

Fourth, make recommendations as to structural, organizational, and procedural changes that will ensure a just, effective, responsive, and efficient court system into the next century; and

Fifth, develop a general plan to implement the recommendations.

The Commission's membership was broad-based and diverse and reflected the Supreme Court's interest in forming a partnership with the other two branches of government, the bar, private-sector business and labor interests, advocacy groups, and other community based organizations to develop a plan for the court system.

At its first meeting in October of 1997, the Commission adopted a set of guiding principles in order to focus its deliberations on what the court system should achieve, and not --at least initially-- on what the court system should look like. The strategy was to identify the desired outcomes and then design the structures and processes that would achieve those outcomes. The five principles, based on nationally recognized standards of court performance, also express the judicial system's fundamental values. The Commission termed these principles the Criteria for Excellence in Judicial Administration.

The first is **ACCESS TO JUSTICE** -- insuring that all people can use the courts by eliminating physical, economic, and procedural barriers and by making the justice system convenient, understandable, and affordable.

Second, **EXPEDITION AND TIMELINESS** -- insuring that cases are processed in a timely

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manner and resolved with finality, that schedules are met, and that changes in laws and procedures are promptly implemented.

Third, **EQUALITY, FAIRNESS, AND INTEGRITY**-- insuring that the courts respect the dignity of every person, regardless of race, class, gender, or other characteristic, that court procedures adhere to relevant laws, procedural rules, and policies, and that cases are decided upon legally relevant factors.

Fourth, **INDEPENDENCE AND ACCOUNTABILITY** -- insuring that the judicial system maintains its distinctiveness as a separate branch of government, monitors and controls its operations and use of resources, and educates and accounts to the public for its performance.

Fifth, **PUBLIC TRUST AND CONFIDENCE** -- insuring public respect for the court system and compliance with its decisions.

At its initial meeting, the Commission also approved a work plan which included an intensive period of information gathering and data collection through April 1998. As part of its Administrative Order establishing the Commission, the Court mandated that the perspectives and opinions of both those who work within the system and those who use the system be considered in this process. Pursuant to this work plan, the Commission held nine public hearings; conducted a random sample survey of members of the State Bar; distributed exit questionnaires to petit jurors serving during the period; surveyed all judicial officers and other court personnel; included seven court-related questions on a statewide public opinion telephone poll; and accepted written submissions via the mail and at its web site. A summary of the research methods and information collection is included as Chapter 3 of this report.

During this process, the Commission heard from many differing perspectives and interests. Some of the submissions were poignant, some addressed very specific individual concerns, but all were thoughtful and sincere. The process yielded a great deal of information, and the Commission is grateful to the many employees of the court system, members of the bar, representatives of agencies and community organizations, and concerned citizens who took the time and effort to respond. There were individuals who wanted the Commission to investigate or re-try their cases, but even in the accounts of these and other litigants, there were often insights into procedural and structural problems in the system. Litigants are considered to be biased observers of the court system, but they are often very capable of separating the outcome of their case from their perception of whether the procedures were fair, decision-makers were neutral and unbiased, and whether they were treated with dignity and respect.

During this phase of its work, the Commission also benefited greatly from the work of many previous and ongoing court-related committees, commissions and task forces. For example, the State Bar's Commission on Children and the Law and Judicial Improvement Committee, the Court Improvement Oversight Board, the Judicial Association's Rules Committee, the Supreme Court's Gender Fairness Task Force, and the Governor's Family Violence Coordinating Council--to cite just a few examples. Clearly, the Commission's work is built on these and other efforts and reflects the progress already achieved in many areas.

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After all of the information and data was compiled, sorted and sifted, 26 issues were identified for the Commission's consideration. They represented a broad spectrum of concerns, from caseloads to computers, from sentencing to security, from mediation to merit selection, and from education to ethics. In March of 1998, the Commission convened a Focus Group meeting with approximately 70 representatives of the court system, other government agencies, the public and private bar, and other interested associations and individuals to help it prioritize these issues. The focus group ranked the issues in terms of importance as well as their urgency and the likelihood they could be "fixed" as the result of the Commission's and court system's efforts. In mid-April, two informal focus groups were also held with the faculty of the College of Law to discuss the issues.

The Commission held its second meeting on April 30, 1998. To make its task more manageable, the Commission subdivided into four subcommittees to address the issues arrayed under the first four themes of the Criteria for Excellence. These subcommittees met through the summer and their work resulted in the generation of 26 reports which were delivered to the Administrative Office of the Courts on August 15, 1998. These reports are excellent resources on each topic. They contain concise overviews of each issue, outline sources of information and data, present findings and conclusions, and make recommendations for change. The subcommittee reports are compiled in a companion volume to this report which is available upon request to the Administrative Office of Courts.

The subcommittee reports were distributed to all Commission members in mid-September and the 162 recommendations that emerged from the subcommittee process were taken up by the Commission at its third meeting on September 24, 1998. Three issues--the jurisdiction of a proposed family court, a proposed intermediate appellate court, and merit selection of judicial officers--could not be fully discussed and voted upon within the allotted time on that day and were the subject of an additional meeting on October 13, 1998. Amendments to the original subcommittee recommendations and areas of substantial debate are discussed under their respective issues in Chapter 5 of this report.

It was the Commission's responsibility to recommend what is best for the judicial system, not just the easiest or quickest solutions. The Commission's recommendations range from dramatic proposals for change to the structure and approach of the courts in some areas to minor refinements of the system. Some are quite specific, while others are more abstract. There are a few issues that require study beyond that which could be accomplished in the Commission's tenure, and so the recommendations are more circumspect. Some of the recommendations can be accomplished immediately, others will require planning, fund-shifting, and/or coordination of efforts by a number of individuals or agencies.

The final report of the Commission on the Future of the West Virginia Judicial System was presented to the Supreme Court of Appeals on December 1, 1998. Discussion of the report will likely lead to more ideas for change or redirection of the course the Commission has charted. That would be a welcome response and signify the true success of the Commission's work.

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CHAPTER 2

THE CONTEXT

> *Scarcely any political question arises in the United States which is not resolved, sooner or later, into a judicial question.*
>
> --Alexis de Tocqueville

With the Supreme Court's establishment of an entity to examine the future of the court system, West Virginia joined an ever growing number of states making a commitment to such an effort. To date, more than half of the states have formed a futures commission or task force. A number of others have conducted court futures activities, such as conferences or research projects. Most of these efforts share common goals and objectives. The impetus to engage in both critical self examination and strategic planning is found in the challenge of providing justice in a rapidly changing world. Despite its homogeneity, relatively low crime rate, stationary population, and stable caseload volume, West Virginia is not immune to the pressures which have affected state court systems nationwide. For example:

- the demand that courts resolve problems and not just decide cases;
- the increasingly complex nature of the law and legal disputes;
- the heightened demands and expectations on the part of court users and the public for "user-oriented" and "community-oriented" courts;
- the dramatic impact of technological advances on the exchange of information and communication;
- the rise of alternative forums for the resolution of disputes;
- the unprecedented scrutiny of judicial system performance by funding bodies, the news media, and the public;
- the diminished public trust and confidence in all government institutions including the judicial system; and
- the tension to accommodate change while retaining the traditional purposes, responsibilities and values of the court system.

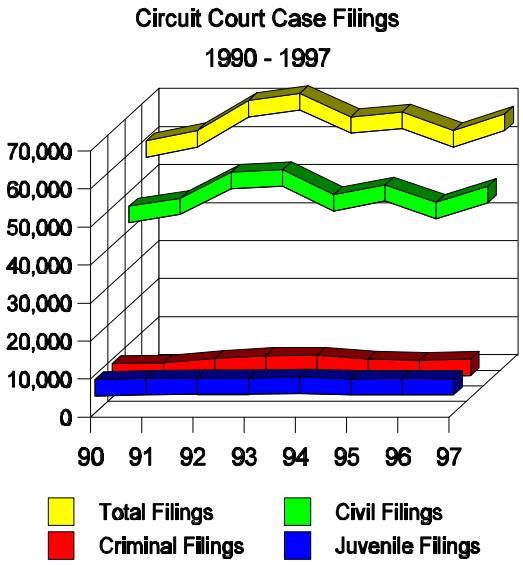
In addition to these broad trends impinging on the West Virginia judicial system, there were forces at work within the current court system that presented challenges and spurred the formation of the Commission.

First, the time was right. Article 8, Section 5 of the West Virginia Constitution provides that judicial circuits may only be realigned by the Legislature in the year preceding the full term election of judges. Therefore, if structural or jurisdictional changes were needed in the present court system, these proposals needed to be considered in conjunction with circuit realignment in 1999, prior to the year 2000 election. The next opportunity for redrawing of circuit boundaries will not occur until 2007. Likewise, the four year terms of family law masters expire on July 1, 1999.

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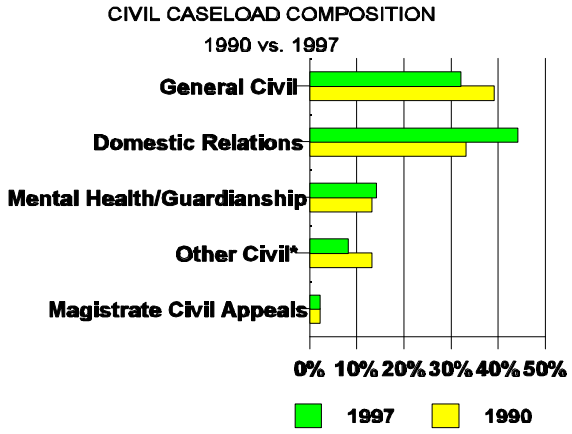
Second, the nature of the court's business is changing. Certain trends in the caseload at both the trial and appellate court level are a growing concern. In 1997, more than 64,000 cases were filed in the circuit courts of the State. As is shown in Figure 1, the circuit court caseload has experienced some fluctuations since the beginning of the decade, but has been relatively stable over time. As is also shown in Figure 1, the total volume of filings is fueled primarily by the civil caseload which consistently constitutes 75% to 80% of the circuit court docket. However, a dramatic change has occurred within the civil caseload.

Figure 1



As Figure 2 illustrates, "general civil" actions, which include personal injury, malpractice, product liability, contract cases and similar matters, decreased by 11% from 1990 to 1997, from 17,243 to 15,394. Domestic relations cases, on the other hand, increased by a vigorous 47% during the same period, from 14,582 filings in 1990 to 21,410 in 1997. The result is that domestic cases, which were one-third of the civil and one-quarter of the total caseload in 1990, are now 43% of the civil and 33% of the total caseload statewide. Domestic cases outnumber general civil case filings in 26 of the 31 circuits. This increase in volume coupled with the increased complexity of family law cases is clearly taxing the family law master system and is a factor in a rising sense of litigant dissatisfaction with performance in this area.

Figure 2

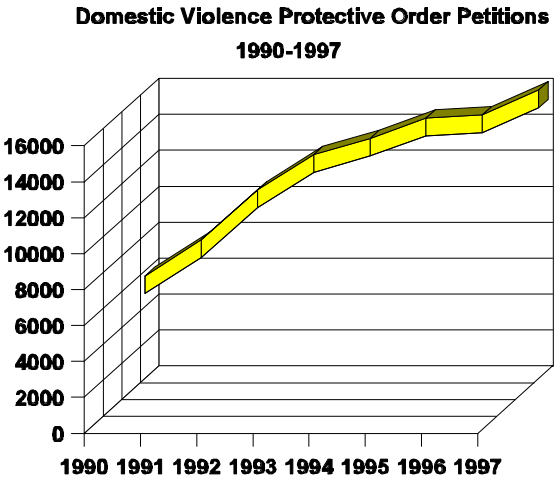


*Includes administrative agency appeals, adoptions, and miscellaneous petitions.

In addition to these changes in circuit court, the number of petitions for domestic violence protective orders filed in magistrate court increased by almost 200% since 1990, from approximately 5,200 to over 15,500 in 1997. This dramatic growth, illustrated in Figure 3, has been accompanied by changes in the domestic violence law designed to grant victims greater protection and relief and enhance the system's response to these cases. While necessary and beneficial, these changes have also made the application of the law more intricate and time-consuming. The demand, in terms of both volume and complexity, has exceeded the capacity and original vision of the role of magistrate court in this process.

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Figure 3

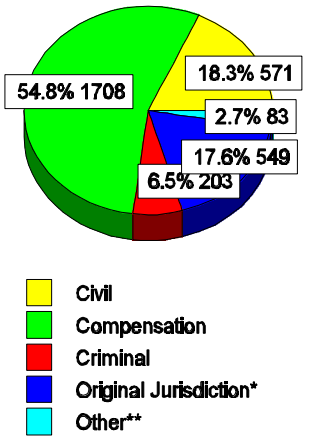


The greater volume and complexity of family-related cases entering the court system has prompted many court participants and observers to call into question the system's fragmented approach to family law matters. There is a growing recognition of the potential for delay, conflicting orders, lack of coordination of services, and the likelihood that a family might appear before five or more different judicial officers in the course of resolving its legal problems.

At the appellate level, the Supreme Court of Appeals continued to experience a steady increase of cases. A total of 3,114 petitions were filed in 1997, a 53% increase over the number filed in 1987, and the second highest number of filings in the Court's history. The growth in the Court's caseload is attributable almost exclusively to an increase in workers' compensation cases. As compared to 1996, the number of petitions filed in 1997 fell slightly across most categories; however the number of workers' compensation cases rose significantly, from 1,534 to 1,708, an 11% increase. Since 1987, the number of workers' compensation petitions has increased by more than 100%. As Figure 4 shows, workers' compensation cases now constitute 54% of the Court's docket, up from 41% in 1987.

Figure 4

Case Types as a Percentage of 1997 Total Caseload



* Original Jurisdiction includes: habeas, mandamus, and prohibition

**Other includes: certified questions, writs of certiorari, petitions and ethics cases

Even without the worker's compensation cases, the West Virginia Supreme Court would have the largest number of total filings and the highest number of filings per justice of any comparable appellate court in the country. West Virginia is one of only ten states without an intermediate appellate court despite the fact that its filings exceed the total number of appellate cases in one third of the states that do have an intermediate appellate court.

Third, the demographics of the court system's clientele is changing. West Virginia's population level has fluctuated for half a century. After declining in the 1950s and 1960s, it increased in the 1970s only to begin to decline again in 1983. A decrease of 160,000 through the 1980s followed an increase of 210,000 over the 1970s. The latest projections indicate a population that will be

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fairly stable over the next 30 years at 1.8 million. Given the strong positive correlation between population and case filings, there is little expectation that West Virginia will experience dramatic caseload growth in the foreseeable future. However, there is more to demographic change than just population growth and decline.

Nationwide, changes in divorce, marriage, and labor force participation rates, migration patterns, and lifestyle preference, along with population aging, have substantially altered the traditional family. In the past 25 years, West Virginia experienced a decline in the absolute number and rate of marriages and an increase in the number of divorces. In 1980, approximately 8% of births were to unmarried women; that figure increased to 30% by the early 1990s. The percent of births to unmarried teens was 6% in 1980, but over 10% in 1990. At the same time, the number of children in poverty rose from approximately 19% in 1980 to more than 26% in 1990.

By the year 2020, demographers estimate that 18% of West Virginia's population will be 65 years of age or older, above the national rate of 15%. It is also forecast that some 60% of those over 65 by 2020 will be women, and by age 80, women will likely comprise approximately 70% of the elderly in the State. The consequences of this aging of the population on the court system could be dramatic in terms of the types of cases coming into the system, such as elder abuse, pension disputes, age discrimination actions, wills and taxes, and even right-to-die litigation.

Although West Virginia has not experienced the influx of ethnic and minority groups that has occurred in other states, there is increasing diversity in the population. The impact of this increase in diversity is confined to certain areas of the State and the groups involved often represent a distinctive labor pool. The court system must be prepared to accommodate and address the needs of a more pluralistic society.

Fourth, technology holds great promise but also creates great demands. The last decade has seen a significant growth in the uses of technology to address different aspects of court operations and judicial decision-making. New technology can make a substantial contribution toward improving judicial system accessibility, efficiency, and productivity, but it must be embraced, actively used and managed. It must also not be imposed on outmoded structures and processes that have not been reviewed for their efficiency and effectiveness. However, the court system can not proceed at a leisurely pace, evaluating and weighing every advance or installation. There will be increasing pressure from the public and users of the system for the court system to provide access to court information via the technological innovations commonly used by the private sector, to pay court fees and other costs electronically, and to have system wide communication capabilities.

While the State of West Virginia and the judicial system have embarked on one of the most promising and progressive technology projects in the nation (2001 Courtroom of the Future), there are also some bumps on our information superhighway. All circuit clerk offices are not computerized and the 45 that are automated have a variety of case management systems. Magistrates courts have uniform software, but at both levels of courts computer systems are generally not networked intra-county, much less inter-county, nor are they linked with the Administrative office or other state agencies. There is little information

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transfer or communication capability. Moreover, some courts need even more fundamental communication technology, such as additional telephone lines, facsimile machines, and electronic library services.

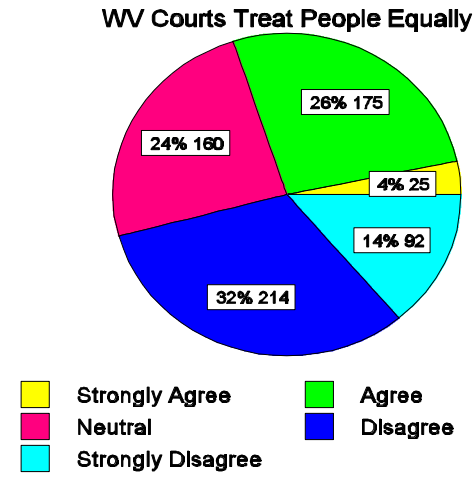
Finally, the poor public perception of court system performance has to be addressed if confidence in the system and its decisions is to be maintained. The judicial system can not ignore the general erosion of confidence in the courts, as well as all public institutions, which has occurred over the last decades. To assess the perceptions of West Virginia citizens, the Commission participated in a statewide, random sample, telephone survey designed to answer the basic question "How are we doing?"

The specific questions used in the survey were fashioned around the themes of the Criteria for Excellence in Judicial Administration, the conceptual framework that guided the Commission's work, and were broad attempts to assess the public's view of such fundamental issues as the accessibility, fairness, equality, and accountability of the judicial system. While a certain percentage of the 712 respondents had direct experience with the courts, the majority had not. Therefore, the results provide more of an insight into the prevailing community impressions of the judicial system and its decisions than a user evaluation. The sources of the respondents' perceptions, absent direct participation in the courts, are a matter of speculation, but may include the media, experiences of friends and family members, and over-arching attitudes toward all government institutions.

Two facets of the broad concept of access were addressed in the survey: cost and procedural difficulty. Slightly more than a third of the respondents did not believe that WV courts were affordable for ordinary people and a little more than a quarter rated them as difficult or extremely difficult to understand.

On the standard of equality, fairness, and integrity, respondents were first asked to agree or disagree with the statement "West Virginia courts treat people equally." The results are shown in Figure 5. While approximately a quarter of the respondents were neutral on this question, almost half disagreed or strongly disagreed with the statement. Only 4% of the respondents strongly agreed that WV courts treat people equally.

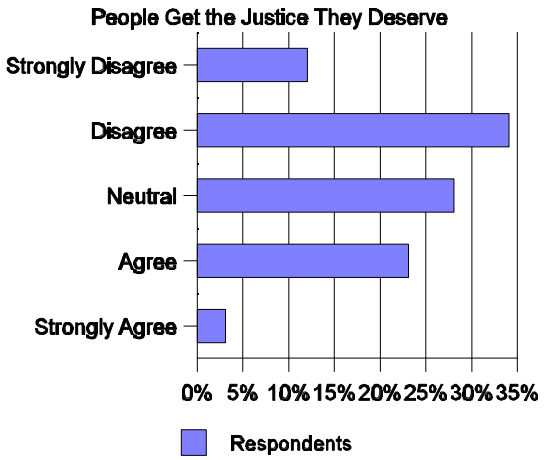
Figure 5



Respondents were also asked to react to the assertion that "People get the justice they deserve." Figure 6 displays the responses.

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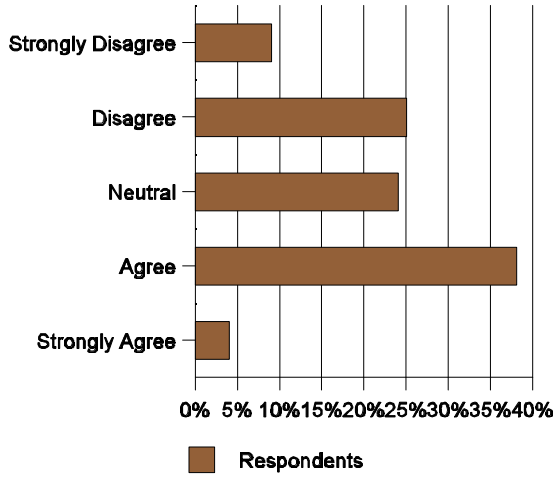
Figure 6



Again, while a little more than a quarter of the respondents were neutral, close to half either disagreed or strongly disagreed with this alternative statement about the fairness and equality of the court system.

Public trust and confidence in the WV judicial system was gauged by both a community perspective and a personal perspective question. Asked to agree or disagree with the statement that "The courts have a positive reputation in my area," respondents aligned themselves as shown in Figure 7.

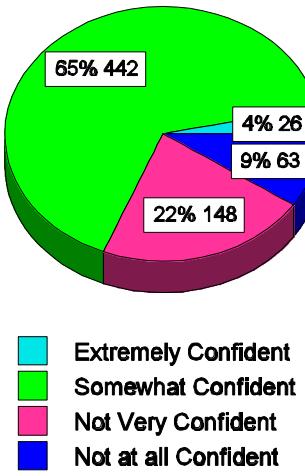
Figure 7
The Courts Have a Positive Reputation in My Area



With 42% of the respondents agreeing or strongly agreeing with this statement, the court system fared somewhat better in this instance than on previous measures. Once again, approximately a quarter of respondents were neutral on this question. A third of the sample disagreed or strongly disagreed with the notion that the courts enjoyed a positive reputation in their community.

Respondents were also asked how much confidence they personally had in the decisions of WV courts. Figure 8 shows the results.

Figure 8
How Much Confidence Do You Have in the Decisions of West Virginia's Courts?



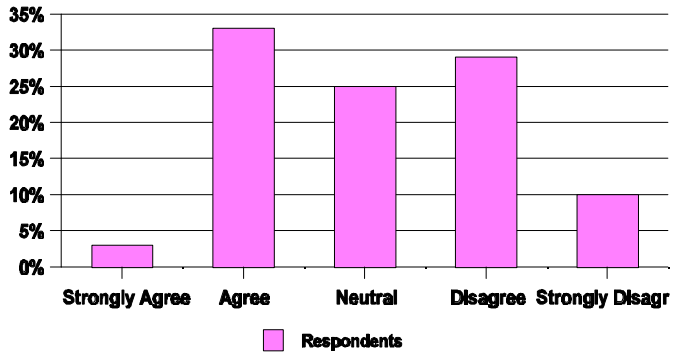
The lack of a "neutral" response category on this item may contribute to the convergence on the "somewhat confident" answer. Still, once again, the results are more positive than on some other measures, with less than a third of the respondents expressing little or no confidence in the courts' decisions.

In the final question, respondents were asked to agree or disagree with the simple statement: "The justice system works." The answers are

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displayed in Figure 9. This question was meant to address the issue of accountability, but it also speaks to all of the main tenets of the Criteria for Excellence, including confidence, fairness and integrity, and accessibility.

Figure 9
The West Virginia Justice System Works



Again, 25% of the respondents were neutral on this issue, but the remainder were almost evenly divided between agreement and disagreement with the statement.

While West Virginia's results are on a par with those obtained in other states, or in some instances, somewhat more positive, they are still cause for concern. Clearly, the responses speak to problems not just with the court system but with all of government and the legal system as a whole. Respondents often do not understand the distinctions between government entities or the particular role of the courts in the system of justice. Still, whether the ratings are justified is not the issue. The court system must have a substantial measure of public confidence to maintain its independence and support. One way the judiciary can improve public perceptions is to take definite steps to improve court performance.

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CHAPTER 3

THE METHODS

> *No set of legal institutions or prescriptions exists apart from the narratives that locate it and give it meaning. Once understood in the context of the narratives, law becomes not merely a system of rules to be observed, but a world in which we live.*
>
> --ROBERT M. COVER

In accordance with the work plan adopted by the Commission on the Future of the West Virginia Judicial System at its initial meeting on October 13, 1997, a number of data collection methods were pursued throughout the Fall of 1997 and Winter of 1998. These activities, designed to discover the most critical issues facing the State's court system, included: conducting public hearings; surveying all judicial officers and court personnel; polling petit jurors; surveying a random sample of members of the State Bar; participating in a statewide telephone public opinion poll; accepting written submissions via the mail and e-mail; and convening a focus group meeting to prioritize issues.

PUBLIC FORUMS

In compliance with the Supreme Court's mandate that the Commission solicit and evaluate the views of those who use the courts every day, nine public forums were conducted throughout the State between November 1997 and January 1998. Hearings were held in Beckley, Charleston, Elkins, Huntington, Logan, Martinsburg, Morgantown, Parkersburg and Wheeling. Commission members served as moderators, and transcripts were made of the proceedings. Over 400 people attended the forums, and 85 individuals, representing a diverse array of organizations and interests, made oral presentations to the Commission. Twelve persons, who chose not to speak publicly, submitted their comments in writing at the forums. A brief summary of the speakers and issues discussed at each public hearing is included in Appendix C.

JUDICIAL OFFICER AND COURT PERSONNEL SURVEY

In order to benefit from the accumulated experience and expertise of the approximately 950 individuals who work in the court system, the Commission distributed a questionnaire to all employees with their mid-February 1998 paycheck. In addition, the questionnaire was sent to all circuit clerks with instructions to disseminate copies to all of their deputies. The survey form is shown in Appendix C. The open-ended questionnaire, designed to elicit issues and concerns as well as possible solutions, was to be answered anonymously; the employee was asked only to list his or her job title.

Of the thousand or so individuals surveyed, there were 90 respondents. They included one justice, ten circuit court judges, four family law masters, 14 magistrates, two law clerks, nine judicial secretaries, 32 circuit clerks and deputies, 11 magistrate clerks and deputies, 14

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probation officers, two court reporters, and one Administrative Office employee. Three respondents did not indicate their position.

Many diverse issues were raised, a number of which concerned training needs, internal operating procedures or personnel problems. Common systemic themes included: the need for uniformity across counties/courts; bias effecting accessibility; physical facilities and security; domestic violence procedures; domestic relations case jurisdiction and procedure; juror selection procedures; juvenile detention and treatment facilities; juvenile case processing time; mental hygiene case processing; accountability of probation officers; the needs of *pro se* litigants and their impact on the system; the need for increased use of new technology; and the timeliness of case disposition.

JUROR EXIT QUESTIONNAIRES

The Commission requested that all circuit courts distribute juror exit questionnaires to petit jurors in service between December 1, 1997 and March 30, 1998. A copy of the questionnaire, designed to provide demographic, utilization, and attitudinal data on the jury pool, is shown in Appendix C. More than 1,400 petit jurors, representing 31 of the 55 counties, completed and submitted questionnaires. The sample reflects only those jurors who were qualified and reported for service; it is not reflective of the larger array of jurors who were summoned but were disqualified or excused from service nor those on the master list. A summary of the results of the juror exit polling is included in Appendix C.

STATE BAR SURVEY

To ensure that the large number of attorneys practicing in the court system were encouraged and had ample opportunity to express their concerns and suggestions, the Commission conducted a random sample survey of active members of the State Bar. The survey form, shown in Appendix C, was designed, in part, to render a preliminary priority list, from the Bar's perspective, of the issues already identified via the public forums and written submissions. Of the approximately 3,800 active State Bar members, 1,346 received questionnaires and 450 responded.

The top five issues that emerged from the request to rank the most crucial issues from a list of seventeen statements were: the role and need for an intermediate appellate court; merit selection of judges; uniform rules and procedures; judicial elections; and, accountability of judicial officers. Complete rankings are shown in Appendix C.

In addition to the ranking exercise, more than half of the attorney respondents took the opportunity to answer the open-ended questions, either to emphasize or elaborate on their rankings or to put forth new issues and suggest reforms. Among the most frequently cited matters were: the perception that bias and politics effect judicial decision making; the concern that judges do not rule in a timely manner; the lack of uniform statewide rules of procedure; the need for law clerks at the circuit court level; the desirability of a unified family court system; the perceived problems with judicial elections and campaigns; the degree of assistance for *pro se* litigants; and the lack of a requirement that magistrates be licensed attorneys.

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WVU SOCIAL INDICATORS SURVEY

With the assistance of Dr. Ronald Althouse and the staff at the West Virginia University Survey Research Center, the Commission constructed a limited number of questions for inclusion on the Center's annual Social Indicators Survey. This statewide, random sample, telephone survey gave the Commission the opportunity to measure the general public's perceptions of the judicial system. The results are an important supplement to the opinions and concerns gathered from those who work within the system or who have experienced the court system as a party to a case. A series of "screen" questions allowed results to be analyzed by whether respondents had had contact with the system. The substantive questions were broad assessments of court performance:

[1] Do you consider West Virginia courts affordable for ordinary people?
[2] How understandable are West Virginia's courts?
[3] Do people get the justice they deserve?
[4] Do West Virginia courts treat people equally?
[5] Do the courts have a positive reputation in your area?
[6] How much confidence do you have in decisions of West Virginia's courts?
[7] Does the justice system work?

The responses of the 712 citizens who participated in the survey are analyzed and presented in Chapter 2.

WRITTEN SUBMISSIONS

The Commission encouraged written submissions, via the mail and through the Supreme Court's website, at each of the public hearings, through letters sent to numerous public organizations, in advertisements posted at every court location, and in *The West Virginia Lawyer*. The Chair of the Commission, David Hardesty, also urged the members to have their constituent groups submit written comments. Approximately 75 people responded by mail. Some of these letters were from court employees, bar members, public officials or organizations; however, a majority of the letters were from private citizens. Five other persons sent their comments via the Internet.

By far the most common issues raised in the written submissions focused on domestic relations law and the Family Law Master System, including specific concerns about child support awards, custody determinations, and visitation. Other frequently cited areas of discussion included: the creation of an intermediate court of appeals; various aspects of the domestic violence protective order process; judicial accountability; judicial elections/merit selection of judges; magistrate training; and the timeliness of entering orders.

ISSUE IDENTIFICATION BY COMMISSION MEMBERS

Although not part of the formal data collection activities of the Commission's work plan, the members of the Commission engaged in a small group "brain storming" session at its first meeting on October 13, 1997 in response to the question of "If there was one thing you would change and immediately begin to work on in the court system, what would it be?" The Commission's list included:

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[1] consolidation of domestic issues into a family court, and modification of the family law master system;
[2] creation of new criminal and juvenile detention and treatment facilities;
[3] integration of alternate dispute resolution mechanisms in the court process;
[4] implementation of advanced technologies in the courts;
[5] timeliness of court proceedings and case processing;
[6] statewide procedural uniformity;
[7] increased public education;
[8] juries representative of the population from which they are drawn;
[9] enforcement of ethics rules;
[10] appellate access;
[11] increased security;
[12] improved access;
[13] review of magistrate system and overlapping jurisdiction questions;
[14] judicial selection; and
[15] magistrates' and family law masters' physical facilities.

FOCUS GROUP MEETING

The Commission's data collection activities were capped by a Focus Group meeting convened in Morgantown on March 30, 1998. Participants were nominated by Commission members. The purpose of the meeting was to analyze and prioritize the issues most commonly heard throughout the data collection process. Of the fifty-seven participants, 23% were judicial officers and other court personnel, 32% were private attorneys, 14% were public sector attorneys, and 23% were from various agencies and organizations that interact with the court system on a routine basis.

The Focus Group engaged in three separate exercises. First, the participants ranked the 27 issues arrayed under the major headings of the Criteria for Excellence in Judicial Administration in order of importance. Second, they rated the feasibility or "do-ability" of the same issues. Third, they reviewed the ten issues which were determined to be both most important and most feasible and ranked them as to their urgency. The Focus Group's perception of the most important, feasible and urgent issues was:

[1] Uniformity of court policies, rules of procedure and forms;
[2] Unification and coordination of court services in cases involving families;
[3] Timeliness of case processing and court procedures;
[4]tie Integration of alternative dispute resolution mechanisms in the court process;
[4]tie Accountability of judicial officers and other court personnel;
[6]tie Accessibility and efficiency of the appellate process;
[6]tie Appropriateness of magistrate court jurisdiction, especially in domestic violence cases;
[8] Enforcement of the ethics code;
[9] Sufficiency of training opportunities for judicial officers and other court personnel; and
[10] Representativeness and inclusiveness of jury panels and utilization and education of jurors.

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CHAPTER 4

THE PLAN

> *You imagine what you desire; you will what you imagine; and at last you create what you will.*
>
> --GEORGE BERNARD SHAW

The Commission envisions a court system for the citizens of West Virginia that is accessible and responsive, timely in its decisions and processes, fair and just, and accountable for its rulings, conduct, and use of resources. As befits its role, it is a wholly independent entity, but collaborates with other agencies and organizations so that it may more effectively fulfill its mission. Every individual and matter that comes before it is accorded respect and dignity. It is a system marked by integrity.

The bricks and mortar of this vision are contained in the Commission's recommendations, and the Commission is proud of the body of broad-based and far-reaching recommendations proposed. However, for the present, they are only words on paper. Their importance, force and effect lie in their implementation. Making that happen will take the leadership, active support and persistence of those who demand a court system that meets the standards which have been the focus of the Commission's work.

Many of the Commission's recommendations can be accomplished by the Supreme Court through its administrative authority, others will require the Legislature to pass or amend legislation or to propose constitutional amendments. Full implementation will require participation by the Governor, the State Bar and local bar associations, the judiciary and other court personnel, county commissions, prosecutors, public defenders, sheriffs, and various committees and governmental agencies.

The Commission has purposefully chosen not to create a list prioritizing implementation of the recommendations for several reasons. First, it was clear from the information gathered during the data collection process and the commentary heard at both the March 1998 Focus Group meeting of "stakeholders" and the April 1998 focus group meeting of West Virginia University College of Law professors that each and every issue was "urgent" in the eyes of some stakeholder in the system. Second, the Commission believes that each body with the power and authority to implement the recommendations has the knowledge and the expertise necessary to appropriately prioritize implementation. Finally, some of the recommendations will involve substantial costs to implement, even though they may result in long term savings as well. Available funding will necessarily determine in part the implementation schedule of some recommendations.

While all the changes proposed will not be achieved at once or necessarily in the exact form advanced, it is possible to sketch the broad outlines of the structure and agenda of the court system the Commission proposes. Such a snapshot may not do justice to the breadth and depth of the specific recommendations presented elsewhere in this report, but, it serves to emphasize the basic themes on which members of the Commission

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agree.

The structure of the West Virginia Judicial System will change:

- An intermediate appellate court will provide greater access to litigants, more timely decisions, and the opportunity to develop a written body of administrative law.

- A family court will treat the family unit holistically, with specially trained judges, supported by case managers and other appropriate personnel, hearing all family law cases including petitions for domestic violence final protective orders, child abuse and neglect and other juvenile matters.

- Circuit and magistrate court clerk offices will be merged and under the full administrative and budgetary control of the Supreme Court in order to enhance communication between the levels of court, maximize the use of technology, and consolidate administrative support.

- The administrative and technical support available to local courts will be enhanced by the addition to the Administrative Office of Courts of four regional trial court administrators and an oversight coordinator for child abuse and neglect cases.

- Court Appointed Special Advocates will be available statewide to advocate for the best interests of children in abuse and neglect proceedings, and there will be more volunteer lawyers and mediators to serve *pro se* and low-income litigants.

The court system will be assisted by other entities that will conduct research, formulate policy, and manage developments in several broad areas:

- An Office of Alternative Dispute Resolution will oversee and evaluate the use and integration of alternatives to the traditional adversarial process in the court system.

- A Commission on Sentencing Policy, composed of representatives of all branches of government, will conduct research on sentencing trends, establish sentencing goals and priorities, and evaluate the impact of sentencing practices on correctional resources.

- A Committee on Technology in the Courts will encourage and coordinate the use of technology in the courts for the benefit of those who work within the system, litigants, and the public.

- A Court Facilities Commission will establish minimum standards for court facilities and review compliance with these standards statewide.

The establishment and application of uniform policies, rules, procedures, and forms across courts will be a priority:

- The Supreme Court will promulgate rules in a number of new areas,

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including, procedural rules for juvenile delinquency cases, trial court administrative rules, rules on alternative dispute resolution practice, and rules to guide judicial officers and court personnel in their interactions with self-represented litigants.

- The Administrative Office will develop and implement a number of standard forms and guides, many especially designed to assist self-represented litigants.

- Training and on-site technical assistance will focus on enforcing uniformity of procedures and the use of standard forms.

Barriers to meaningful access to the legal system will be identified and removed:

- Self-represented litigants will be provided with the information and services necessary to enable them to effectively access the courts.

- Current efforts to insure access to the courts and court programs for those with physical and mental impairments will be accelerated.

- Specific measures will be enacted to insure adequate legal representation for low income litigants in civil cases.

- A multi-faceted approach will be taken to address the cost effectiveness and efficiency of indigent defense representation.

- Court access will be enhanced through the application of new technologies.

- Accurate and understandable information will be made available to litigants, victims, and the general public.

The use of technology to facilitate court operations, case management, and public access will be encouraged and supported.

- The 2001 Courtroom of the Future project will be expanded beyond criminal arraignments to include, among other matters, domestic violence hearings, testimony of child victims/witnesses, and *pro se* assistance.

- Communication technologies, including fax and electronic filing systems, will be available in all courthouses and court offices.

- Computer systems will be integrated and networked across judicial offices and related agencies.

- Information systems will be enhanced, integrated, and allow for monitoring and evaluation of court system operations and projects.

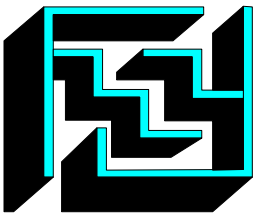
Training and education of judicial officers and other court personnel will be both more expansive and more specialized. Jurors will also become better students of their cases.

Public education and community outreach will be a core function of the court system.

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The court system itself will be a "learning institution," expanding its data collection and research and evaluation responsibilities in order to better monitor system and program performance.

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ACCESS TO JUSTICE

The phrase "Equal Justice For All" should not be an empty one. Our country has a government and a legal system grounded on the legal importance of every citizen. Even schoolchildren can repeat our credo that no one is above the law, but we must also assure that no one is beneath the law.

--P. NATHAN BOWLES, PRESIDENT
LEGAL AID SOCIETY OF CHARLESTON

ISSUE 1: ADEQUACY OF *PRO SE* REPRESENTATION AND SERVICES

West Virginia's courts have experienced a significant increase in the number of litigants not represented by counsel or "*pro se*" litigants. This increase has caused a strain in the court system because *pro se* litigants: generally take more of the court's time than those represented by counsel; often seek legal advice from court clerks, judges and other court staff; and may be less prepared when presenting their cases.

Pro se litigants are most likely to appear in domestic relations cases. The State has an ever-increasing number of domestic cases, 45% of all civil filings and 34% of the total circuit court caseload statewide. Additionally, *pro se* litigants are the rule, not the exception, among those seeking or responding to a petition for a domestic violence protective order; the number of petitions for such orders increased 200% between 1990 and 1997. This trend toward increased *pro se* litigation is expected to continue.

The State's courts, under the administrative leadership of the Supreme Court of Appeals, should provide information and services to *pro se* litigants that will enable them to better use the judicial system. Strengths already exist within the court system upon which to build *pro se* services. For example, the Supreme Court requires circuit clerks to provide *pro se* litigants with forms approved by the Court for use in domestic relations cases. Other forms, not approved by the Court, are available on an *ad hoc* basis from judicial officers, court clerks, the State and local bar associations, programs sponsored by the West Virginia University College of Law and by various social service offices. The Court also uses technology to provide helpful information through its Internet home page (http://www.state.wv.us/wvsca/). Finally, the Court participates in the Courtroom of the Future project, one element of West Virginia 2001, a joint initiative between the State and Bell Atlantic-WV. The project involves use of "ATM" technology which allows for state- of-the-art video-conferencing between a judicial office and second facility such as a jail, prison or educational institution.

In addition to those actions taken by

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the Supreme Court, many different organizations located around the State provide *pro bono* or reduced-cost legal services. Some of these service providers have created educational clinics for *pro se* litigants.

While each of these sources provide important information, there has been little, if any, coordination between the various *pro se* assistance providers. A multi-disciplinary, multi-organizational approach toward the delivery of information and other services to *pro se* litigants should continue but must be coordinated under the leadership of the Supreme Court to create consistent court rules of procedure and policy, helpful fill-in-the blank forms, and informational brochures to ensure the adequacy of *pro se* representation and services.

To ensure access to justice by *pro se* litigants, the Commission makes the following recommendations:

1.1 The **Supreme Court** should amend all relevant rules to provide more explicit guidance to court personnel, attorneys and the public as to the duties and limitations placed on each in cases involving *pro se* litigants and should provide training for court personnel on how to assist *pro se* litigants.

1.2 The **Supreme Court** should provide self-represented litigants with information and services to enable them to better use the courts. The Court should work with the **Bar, legal service providers** and others to create a centralized system for developing and distributing uniform pleadings, motions, and other forms, and informational brochures describing court structure and procedure. The Court should further require the Administrative Office to develop a pilot project to distribute forms and brochures via computer and other multimedia technology. These forms should be formally adopted by administrative order.

1.3 The **Supreme Court** should aggressively use state-of-the-art technology throughout the court system to better serve the public by: seeking the assistance of the National Center for State Courts through its "Public Access to the Courts Technical Assistance Program;" identifying potential sources of grant funding; consulting with other states that have used grant moneys to assist in the development of technology programs used to enhance the delivery of information to *pro se* litigants; requiring the Administrative Office of Courts to focus on the selection and implementation of new technology and the maintenance of an information database; and by continuing its involvement in the West Virginia 2001 Courtroom of the Future project.

1.4 The **Supreme Court** should require local **court clerks** to designate one or more persons to serve as *pro se* facilitators who would provide individual assistance to *pro se* litigants, attend mediation training, and identify cases involving *pro se* litigants suitable for mediation.

ISSUE 2: UNIFORMITY OF COURT POLICIES, RULES OF PROCEDURE, AND FORMS

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The Commission's March 1998 Focus Group identified the need for "uniformity of court policies, rules of procedure and forms" as the most important, fixable and urgent issue confronting the judicial system. Under its Constitutional administrative authority, the Supreme Court is responsible for promulgating rules of practice and procedure for the State's courts including the RULES OF CIVIL PROCEDURE FOR TRIAL COURTS OF RECORD and 25 other sets of rules governing almost every area of court-related activity.

When surveyed, members of the West Virginia State Bar cited variations in written and unwritten local court rules, policies and procedures as the most problematic "uniformity" issue. The Supreme Court has responded to this critical problem by appointing a Judges' Rules Committee, made up of circuit court judges from around the State, charged with drafting uniform rules. These rules will be presented to the Court along with the updated and reorganized TRIAL COURT RULES.

A second critical uniformity issue regards the circuit court and magistrate court clerks' offices. In each of the State's 55 counties, the circuit courts are served by an office of the circuit clerk, where pleadings and other papers of record are filed. The position of circuit clerk is an elected position established by the Constitution, and each circuit clerk's office is under the budgetary control of its county commission. While the circuit clerk is subject to the supervisory control of the chief judge of the circuit court, the circuit clerk's staff is composed of county employees. Conversely, magistrate clerk offices are entirely under the budgetary and administrative control of the Supreme Court. Magistrate clerks maintain magistrate court files and computer records separate from those of the circuit clerk. The Supreme Court's lack of budgetary control over the circuit clerks' offices poses obstacles to the Court's efforts to promote uniformity in the judicial system.

To ensure efficient use and application of uniform rules, policy and procedure, the Commission makes the following recommendations:

2.1 The **Supreme Court** should make every effort to adopt rules that will ensure the uniformity of court policies, rules of procedure, and forms in all state courts.

2.2 The **Legislature** should transfer full administrative and budgetary control of circuit clerk offices to the Supreme Court of Appeals, and merge the offices of the circuit court clerk and magistrate court clerk into a single, unified "Clerk of Courts" office in each county. The **Supreme Court** should require the **Administrative Office of the Courts** to make a plan to facilitate the transfer of control of circuit clerk offices and the merger of the circuit and magistrate clerk offices, taking into consideration facilities, technology, grand parenting technology, protection of current employers, and other matters.

Commentary: Supreme Court administrative and budgetary control would allow for greater uniformity in: personnel matters; procedural, policy and form matters; the creation of court security plans and Americans with Disabilities Act (ADA) compliance plans; and in the cost-effective purchase, distribution and maintenance of modern information and computer technology. Lack of full control has resulted in substantial variations in procedure, technology, and

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employee compensation within and between counties. For example, many of the administrative and record-keeping functions of the circuit clerk are duplicated in the magistrate court clerk's office in each county; most notably, each office has its own computer system, they are not linked, and there is no sharing of information or communication capabilities. Merger would not require a Constitutional amendment as certain constitutional, statutory and rule provisions already exist which vest substantial administrative control of circuit court offices under the direction of the Court (*see* W. VA. CODE §51-1-17).

2.3 The **Legislature** should transfer the circuit clerks' election-related duties to an appropriate agency. However, to maintain the current system of checks and balances and to assure the integrity of the electoral process, official ballots should be delivered to, and held by, the circuit clerk or the new Clerk of the Court until needed for voting purposes.

Commentary: The election duties of the circuit clerk's office (*i.e.*, preparation of the ballot, candidate filing, and conducting absentee voting) place an undue burden on the circuit clerk and are inconsistent with the clerk's record-keeping and court fee-collection functions.

2.4 As the transfer of the circuit clerks' offices to the budgetary control of the Supreme Court would result in significant savings to county commissions, the **Legislature** should statutorily mandate that savings realized by a **county commission** be deposited into a fund for the purpose of making improvements to the county's court facilities. Priority should be given to improvements necessary for increased security and ADA compliance. Counties with adequate facilities should be permitted alternative uses of the funds.

2.5 The **Legislature** should require that clerk fees currently being deposited into the general county fund under the provisions of W. VA. CODE § 59-1-31 should be deposited into a special county fund, analogous to the magistrate court fund (*see* W. VA. CODE § 50-3-4). These fees should be used to defray the expenses of providing services to circuit courts. All expenditures from such fund would be governed by Supreme Court supervisory rules.

ISSUE 3: COMPLIANCE WITH PHYSICAL ACCESSIBILITY STANDARDS

The landmark Americans with Disabilities Act ("ADA"), enacted July 28, 1990, provides individuals with disabilities comprehensive civil rights protection in the areas of employment, public accommodations, state and local government services and telecommunications. Title II of the ADA requires all state and local government entities, including courts, to make their services, programs and activities accessible to individuals with disabilities. Courts may also be impacted by the Rehabilitation Act of 1973, which prohibits discrimination by any state or local government on the basis of handicap in federally-assisted programs and activities.

In response to the passage of the ADA,

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the Supreme Court created the "ADA and the Courts Committee" to: assess court facility compliance with ADA standards; provide technical assistance and corrective suggestions to ADA coordinators and court personnel; and to hold annual training conferences for county ADA coordinators and county commissions.

As part of the plan to assess facility compliance, the ADA and the Courts Committee asked each county to submit a compliance evaluation and transition plan. Only 29 of the State's 55 counties responded to the request. Some of the State's most populous counties were among the 26 that did not respond. Of those counties that did respond, some provided a comprehensive ADA plan, others provided a plan that addressed some but not all ADA issues, and several sent only an informal letter response.

The responses clearly show that many of West Virginia's court facilities have major ADA compliance deficiencies. Very few of the compliance plans described any alternatives for program accessibility, even where clear barriers were identified. No county laid out the procedure by which a person with a disability could obtain accommodation or access. Most plans focused on mobility barriers and failed to address communication barriers such as hearing and sight barriers. Eleven of the 29 responding counties failed to address courtroom conditions, twelve did not identify an ADA coordinator, and thirteen respondents did not provide a timetable for implementing corrections.

In addition to the creation of the ADA and Courts Committee, the Supreme Court has established a procedure by which a person with a disability may file a grievance with the Court's ADA Coordinator in the event of disability-related discrimination in employment practices and policies or in the provisions of services, activities, programs or benefits in the judicial system. The Court has requested that a "Notice of Compliance with Title II of the Americans With Disabilities Act of 1990 (ADA)" be posted in each county's court facilities. That notice provides contact information for the Court's ADA Coordinator.

To ensure compliance with physical accessibility standards, the Commission makes the following recommendations:

3.1 The **Supreme Court** should create a standardized court-facility ADA assessment form, provide qualified, trained persons to conduct assessments in every county, and set a timetable for completion of assessments. Persons conducting the assessments should make recommendations and assist in creating transitions plans using a standardized format created by the Supreme Court. Assessment and transition plans should focus on ALL aspects of ADA compliance, including accommodations for the blind, deaf, hard-of-hearing, physically disabled and others with unique access problems.

3.2 The **Supreme Court** through the ADA and Courts Committee must follow-up on each county's compliance and/or progress with its transition plan through the use of additional assessments and continued assistance.

3.3 The **Supreme Court** should maintain the ADA and Courts Committee's annual training and monitoring programs for ADA coordinators and

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court personnel. The Committee should continue to develop continuing education plans.

3.4 The **Supreme Court** should develop a database of information to accommodate the needs of persons with disabilities, such as creating a list of interpreters for deaf or hearing impaired persons.

ISSUE 4: ACCESS FOR THE POOR AND THOSE WITH LIMITED INCOMES

In our system of technical and complex laws, representation by an attorney is an essential element of justice. Both the United States Constitution and the West Virginia Constitution guarantee that indigent criminal defendants are provided with attorney representation. However, there is no similar right to legal representation for low income citizens involved in civil disputes. Those who cannot afford to hire an attorney have only two choices: (1) hope that they can be assisted by the limited network of inadequately-funded civil legal assistance programs, or (2) do it themselves without any trained legal assistance. In some counties in West Virginia, it is estimated that more than half of the litigants appearing in family law cases are not represented by a lawyer.

There is an enormous need for civil legal representation for West Virginians with limited incomes. The State Bar's 1990 Legal Needs Survey found that during the preceding year: 69% of the low-income persons who responded had experienced a legal problem; low-income households with children were especially vulnerable, 91% faced some legal problem; and nearly 50% of low income households with senior citizens had encountered legal problems.

Over the past twenty years, the provision of civil legal assistance to poor people in West Virginia has steadily eroded due to drastic cuts in federal funding. Large swaths of West Virginia that once had local legal aid offices now are one or two hours driving time (if you have a reliable car) from the nearest legal services program. Shrinking federal funds have been supplemented, but not replaced, by the "Interest on Lawyer Trust Accounts" (IOLTA). Implemented by the West Virginia Supreme Court of Appeals in 1991, the IOLTA Program generated approximately $800,000 for civil legal assistance in 1997. No direct state funding supports the provision of legal assistance to poor people.

Other states utilize a variety of state-based funding sources for provision of legal assistance to low-income people, none of which are currently in use in West Virginia. The most widespread of these include: a civil filing fee add-on, devoted to legal services, used in 19 states; direct state appropriation for legal services to the poor, approved in 19 states; state allocation of other public and grant funds, found in 41 other states; statewide annual lawyer fund drives, used in 27 states; voluntary bar dues check-off or add-on, implemented in 24 states; and class action residuals, directing undistributed funds from class action lawsuits to civil legal service programs, implemented in 12 states.

In addition to providing free representation, legal assistance programs

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provide other services for low income litigants such as *pro se* clinics that teach participants how to handle their own simple family law cases and simple bankruptcies.

The court system also provides some very limited assistance to low-income litigants. Most circuit clerk and family law master offices maintain a stock of family law forms and provide them to members of the public. Moreover, the Supreme Court has recently agreed to provide partial funding for a video presentation of the substantive information portion of a *pro se* divorce clinic. This video should enable other legal services programs and *pro bono* volunteer lawyers to present more clinics with less preparation time.

Many have suggested that private attorneys should fill the gap by donating their services to handle cases without compensation. In fact, the West Virginia State Bar and the state's civil legal aid programs since 1990 have operated one of the most effective statewide coordinated *Pro Bono* Referral Programs in the country. Still, these *pro bono* cases amount to less than a fifth of the number of cases handled by the legal aid programs.

To ensure access to justice by the poor and those with limited incomes, the Commission makes the following recommendations:

4.1 The **Legislature** should increase monetary resources available to support the provision of civil legal assistance to low-income people through the existing network of civil legal assistance providers by: dedicating revenue from a legislated increase in civil filing fees; creating a direct State fiscal appropriation; and by dedicating specific abandoned assets from lawyer trust accounts and unclaimed court bonds to the support of civil legal assistance programs.

Commentary: Nineteen other states have appropriated funds for civil legal assistance, including neighbors Virginia, Maryland and Pennsylvania. Presently abandoned assets escheat to the state along with all other forms of abandoned property.

4.2 The **State Bar** should expand the use of volunteer lawyers to serve *pro se* and low-income litigants, and implement nominal fee arrangements to provide supplementary funding for the civil legal assistance programs.

Commentary: Many private attorneys are reluctant to volunteer because they believe that low-income clients would make unreasonable demands upon their time absent a "fee restraint." To address this problem, some low-income clients could be charged a nominal fee in *pro bono* referral cases. This fee would then be donated by the volunteer attorney to the referring civil legal assistance organization. Because the legal aid system cannot charge for its services, a separate entity, such as the State Bar, would be required to administer the program.

4.3. The **State Bar** should implement a program of volunteer *pro bono* mediators, specially targeted to promote resolution of *pro se* cases, who would donate their standard and nominal fees for the support of civil legal aid programs.

Commentary: Fees for mediators pose a significant barrier to mediation of *pro se* disputes, but mediation could be highly successful in many *pro se* court cases. Mediation in such cases would reduce the

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load on the court system and provide increased satisfaction to litigants. Because the legal aid system cannot charge for its services, a separate entity, such as the State Bar, would be required to administer the program.

Comments on the Commission's Deliberations: The subcommittee that addressed this issue proposed that the Commission recommend the imposition of a civil response fee, payable by defendants, to raise funds to pay for civil legal assistance to low income people and to help alleviate the financial burden clerks' offices face when a case is filed with large numbers of defendants. In response, several commissioners opposed the recommendation on the ground that it was unfair to require a defendant to pay a fee to defend against a suit that the defendant had no choice in bringing. After thorough debate, the full Commission defeated the proposal.

ISSUE 5: ACCESSIBILITY AND EFFICIENCY OF THE APPELLATE PROCESS

The Supreme Court has taken action on multiple fronts to make the appellate process accessible and efficient. Notwithstanding these ongoing efforts, the appellate process is now threatened by a continuously increasing caseload that undermines the ability of the Court to spend adequate time considering, deciding and writing its opinions.

Comparing case load data from other states with only one appellate court confirms that the Supreme Court of Appeals of West Virginia is the busiest appellate court of its type in the nation. In 1996, data from the National Center for State Courts revealed that West Virginia's appellate caseload was more than 1.5 times that of Nevada, the next busiest state with only one appellate court. In fact, the number of filings at the Supreme Court of Appeals was greater than the number of appellate filings in the states of Delaware, Rhode Island, South Dakota, Vermont and Wyoming combined, each of which has only one appellate court. Amazingly, in 1996 the number of filings at the Court exceeded the total number of appellate filings in twelve of the thirty-nine states that have an intermediate appellate court.

In calendar year 1997, 3,114 petitions were filed with the Supreme Court of Appeals. This is the second highest number of filings in the Court's history: up 12 from the 1996 figure of 3,102 (now the third highest number of filings) and only 66 below the 1991 record of 3,180. As compared to 1996, the number of petitions filed in 1997 fell slightly across most categories; however, the number of workers' compensation filings rose significantly-- from 1,534 to 1,708, an increase of more than 11%. While the number of appeals in most categories appears to have leveled off, the number of workers' compensation appeals continues to grow.

As the Court enters the new millennium, the Office of the Clerk projects that the caseload will continue to grow, particularly in the areas of civil and workers' compensation appeals. In fact, it is anticipated that workers' compensation appeals will continue to represent more than 50% of the Court's docket. At the end of 1997, although the Court was able to clear 99.07% of all petitions filed (including 94.38% of the workers' compensation cases), the Court still had 512 cases pending (361 of which were

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workers' compensation appeals and 90 of which were civil appeals).

To ensure the accessibility and efficiency of the appellate process, the Commission makes the following recommendations:

5.1 The **Legislature** should create an Intermediate Court of Appeals as soon as possible with the following parameters:

Commentary: Only 10 other states in the United States have not established an intermediate appellate court. None of those states have a caseload comparable in number or character to the cases now handled by the West Virginia Supreme Court of Appeals. No other state has a workers' compensation appeals docket of the same magnitude as West Virginia. Even if the workers' compensation docket was removed, the Court would still have a caseload greater than most of the other appellate courts that operate without an intermediate appellate court. A full time intermediate appellate court would allow the justices of the Supreme Court adequate time to consider and write opinions that have a defining impact on matters of law and public policy. Moreover, the creation of an intermediate appellate court would relieve the Supreme Court from hearing and deciding routine cases that do not involve unresolved issues of law, constitutional challenges or public policy.

a. The Intermediate Court of Appeals should be a single, statewide court, housed in close proximity to the West Virginia Supreme Court of Appeals so that it can share the Supreme Court's Office of the Clerk, law library, and legal staff and thereby decrease administrative costs and promote efficiency.

b. To dispose of a greater number of cases, the intermediate appellate court should be comprised of a sufficient number of justices to enable it to divide into no less than two panels. For example, a six-member intermediate appellate court divided into two, three-judge panels would hear twice the case load as the same

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court sitting *en banc*.

c. Intermediate appellate court justices should be selected by the same method utilized to select Supreme Court justices and trial judges.

d. Intermediate appellate court justices should serve eight-year staggered terms.

e. The Intermediate Court of Appeals should have jurisdiction over appeals from all administrative agencies, including workers' compensation appeals. Administrative appeals would come from the highest administrative appeal level created by individual governmental agencies or from boards of appeal created by the Legislature.

f. Criminal and civil appeals and original jurisdiction writs would continue to be filed with the Clerk of the Supreme Court. The Supreme Court would continue to hear original jurisdiction cases and determine which civil and criminal appeals it would keep and which would be sent to the Intermediate Appellate Courts.

Commentary: Cases involving a review of trial court decision-making or well-established points of law would most appropriately be heard by the Intermediate Court of Appeals. Assignment methods should be flexible to account for the type and complexity of the case involved.

g. The Supreme Court and the Intermediate Court of Appeals should issue a written opinion for each case that it hears.

h. Each litigant should be guaranteed one appeal-of-right either at the Intermediate Court of Appeals or at the Supreme Court.

i. Appeals from the Intermediate Court of Appeals to the Supreme Court would be at the Supreme Court's discretion. The Intermediate Court of Appeals could certify questions to the Supreme Court on unresolved issues of law. The Supreme Court would have discretion as to whether it would accept the certification.

5.2 The **Legislature** should allow the State a limited right to appeal pre-trial rulings in criminal cases where the judge's ruling precludes the State from proceeding with the case.

Comments on the Commission's Deliberations: After a comprehensive and lengthy discussion, the Commission voted to approve the recommendations listed above with one addition. A majority of the Commission voted to add recommendation 5.2, regarding the State's limited right to appeal pre-trial rulings in criminal cases. Proposed amendments, defeated by majority vote of the Commission, included: deleting the provision requiring that all criminal and civil appeals be mandatory or appeals-of- right; adding a recommendation that the Court would not be required to write an opinion regarding a case it refused to hear; and removing the recommendation that the Court could reassign criminal and civil appeals to the Intermediate Court of Appeals.

ISSUE 6: RECOGNITION OF THE RIGHTS OF VICTIMS IN CRIMINAL AND JUVENILE PROCEEDINGS

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In 1981, the West Virginia Legislature enacted the "Crime Victims Compensation Act." Under the Act a fund was established to pay compensation and medical benefits to innocent crime victims. The system is funded through assessments against persons convicted of misdemeanor offenses, other than non-moving traffic offenses. Claims against the fund are commenced by filing an application with the Clerk of the Court of Claims.

Three years after it passed the Crime Victims Compensation Act, the Legislature enacted the "Victim Protection Act of 1984." Under the Act, victims of a felony or their families are granted certain "rights" under the law, such as the right to: notice of court proceedings; attend public proceedings; make a statement to the court about bail, sentencing, or a plea agreement; notice of parole hearings; attend a parole hearing and to address the parole board; notice of a defendant's or convict's escape or release; an order of restitution from the convicted offender; a final disposition of the proceedings relating to the crime, free from unreasonable delay; consideration of the safety of the victim in determining the defendant's release from custody; and notice of these rights and the right to enforce them. The Act also sets forth specific guidelines for the fair treatment of crime victims and witnesses.

Other West Virginia statutes that benefit victims of crime include: W. VA. CODE § 48-2A-9 regarding law-enforcement response to family violence; W. VA. CODE § 18B-4-5a regarding crimes committed on campus of institutions of higher education; W. VA. CODE § 14-2B-2 regarding the distribution of crime profits to crime victims; W. VA. CODE § 49-5-13b regarding the court's authority in a juvenile proceeding to require the child or his parents to make restitution or reparation to an aggrieved party for actual damages or loss caused by the offense; W. VA. CODE § 7-4-4 regarding the creation of the Prosecutor's Advisory Council and the authority of the Council to seek funds for victim advocates; W. VA. CODE § 48-2A-1 *et seq*. regarding the prevention of domestic violence and protective orders; and W. VA. CODE § 61-2-9a regarding the crime of stalking.

A federal statute of significance to crime victims in West Virginia is the Victims of Crime Act (VOCA) under which grants are awarded and administered by the West Virginia Division of Criminal Justice Services. VOCA grants are used to provide direct services to victims of crime with priority given to eligible programs providing direct services to victims of rape/sexual assault, spousal abuse, child abuse and previously under-served victims of violent crime. VOCA grants have enabled the development of a number of victim assistance and advocacy projects in West Virginia including: the Victim Assistance Program Inc., serving Hancock, Brooke and Ohio Counties and Victim/Witness Assistance programs in both Cabell and Putnam Counties.

The Division of Criminal Justice Services also administers the STOP Violence Against Women Program, mandated under the federal Violence Against Women Act of 1994. The West Virginians Against Violence Committee serves as the advisory board to West Virginia's STOP Program. In 1997, the program funded 23 projects in West Virginia in excess of $1.1 million dollars. For example, STOP grants help fund the Coalition Against Domestic Violence which sponsors thirteen

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shelters for victims of domestic violence located throughout the State. Each shelter also provides outreach programs for victims of domestic violence. STOP grants also fund the West Virginia Foundation of Rape Information Services which assists victims of sexual assault statewide. Other recently implemented STOP grant programs include the Forensic Medical Examination Fund and the West Virginia Domestic Violence Protection Order Registry.

The Supreme Court of Appeals also acts to indirectly assist victims of crime by training magistrates, probation officers, family law masters, and circuit judges about domestic violence issues.

To ensure the recognition of the rights of victims in criminal and juvenile proceedings, the Commission makes the following recommendations:

6.1 The **Legislature** should consider providing more protection to victims of crimes committed by juveniles.

Commentary: West Virginia law provides many rights to victims of crimes committed by adults, however, the statutes concerning crimes committed by juveniles recognize only one remedy: the right to restitution.

6.2 The **Supreme Court** should develop standard victim notification and other forms.

6.3 The **Supreme Court** should consider the needs of crime victims when implementing new technology so that it enables victims of domestic violence or child victims/child witnesses to testify via video-conference.

6.4 The **Supreme Court** should add victims' rights information to its web page, and include links to other resources for victims of crime.

6.5 The **Supreme Court** should ensure that court clerks in each county have on-line access to informational brochures for victims of crime and standardized forms for use in assisting victims of crime, and are networked into the databases collecting crime and perpetrator statistics.

6.6 The **West Virginia Supreme Court of Appeals**, the **West Virginians Against Violence Committee**, and the **Division of Criminal Justice Services** should continue the educational functions they have already undertaken on an annual basis.

6.7 The **State's prosecutors** should assist in expanding Victim Assistance Programs, now located in about ten counties, to those remaining counties that do not have them

6.8 It is vitally important that the **Supreme Court** take a leadership role in victims' rights by continuing to sponsor training of court personnel about victims' rights and by authorizing the use of technology to benefit victims of crime.

ISSUE 7: ADEQUACY OF SECURITY FOR THE PUBLIC AND COURT PERSONNEL AT ALL LOCATIONS

Citizens who use the courts expect court facilities to be safe. However, many of the State's judicial officers have stated that

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court security is one of the most serious concerns facing the judicial system. The Legislature and the Supreme Court of Appeals have recognized this concern and taken steps to improve security both at the appellate and trial court levels.

In 1996, the Legislature created the West Virginia Court Security Fund (the "Fund") under the Department of Military Affairs. All moneys credited to the Fund must be used to improve court security. The Fund is administered by the Court Security Board (the "Board") whose members determine which counties will receive grants under the fund. To date, thirty-two counties have received grants. A county seeking assistance from the Fund must prepare a comprehensive security plan. The Legislature has detailed what each court security plan shall include. Outside the requirement to create a security plan to receive Fund moneys, no county is required to develop a security plan.

The Supreme Court of Appeals has acted on multiple fronts to improve court security. To improve its own security the Court hired a Court Marshal. Additionally, the court continues to take an active role in promoting education and training for courtroom bailiffs, and has participated with the Circuit Courts of Kanawha and Cabell Counties in the West Virginia 2001 Criminal Justice Application Project. The goal of this joint project is to use "ATM" technology to develop the "Courtroom of the Future" through the use of state-of-the-art video-conferencing. Kanawha and Cabell Counties are using ATM technology to conduct criminal defendants' "initial appearance" hearings via video conference, where defendants remain at the local or regional jail and the magistrates remain in the courthouse. This system not only saves money due to decreased transportation costs and officer hours, but it also increases security by keeping inmates in jail.

Despite these efforts, security varies greatly from court to court and from county to county. Some counties have undertaken substantial expense to improve courthouse security by remodeling or constructing new facilities, through the expanded use of technology, and by employing specially-trained personnel. Other counties, particularly those in more rural areas, lack the capital and/or direction to make needed improvements in facilities, technology or personnel. An additional stumbling block exists in counties where court offices are located in more than one building. Multiple facilities are difficult to secure and increase the cost of employing advanced technology that heightens security.

The lack of uniform court security is counterproductive to the goal of providing safe facilities for the public and court personnel. Additional funding is needed to provide for more court security personnel. Moreover, the ways in which security personnel are deployed should be reevaluated. Requiring a bailiff to sit in a courtroom through a proceeding that represents no threat to security is an inefficient use of a bailiff's time. Court security is better served if bailiffs are deployed where they are most needed. The use of video monitors in courtrooms would allow bailiffs to provide surveillance in more than one courtroom at a time.

To ensure adequate security for the public and court personnel, the Commission makes the following recommendations:

7.1 The **Legislature** should amend W. VA.

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CODE § 51, Article 3, to require each county to prepare a court security plan under the supervision of the **Administrative Office of Courts** whether or not the county is applying for a Court Security Fund grant.

7.2 The **Supreme Court and/or the Legislature** should formulate additional applications of the ATM technology currently being used in the Courtroom of the Future project. Once these applications are determined, the Courtroom of the Future pilot project should be expanded to include those applications and additional counties.

7.3 The **Court** in conjunction with **local sheriffs** should develop a policy which prioritizes deployment of bailiffs within a court facility. Consideration should be given to: the type of procedure being held in a courtroom; the risk of violence during that proceeding; the number of bailiffs available; and the need for security in hallways or other areas. The need for court security is especially acute in those courts that hear family law and domestic violence cases.

7.4 The **Supreme Court** should explore ways to use technology in the courts to improve the efficiency and effectiveness of bailiffs.

7.5 Where court facilities are housed in multiple buildings, **county commissions** should include plans for consolidation of those facilities into one courthouse or, alternatively, into one courthouse annex. This concern is critical to increase accessibility by the public to court services and to allow the courts to cost-effectively and efficiently use technology to enhance security.

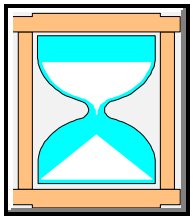
7.6 The **Court** should continue its training of court bailiffs as well as other court personnel in the area of court security.

7.7 The **Court Security Board** should make efforts to identify sources of available grants or donations from the State and Federal Governments, as well as from the private sector, for use in this and other matters important to the court system.

7.8 The **Legislature** should work with county governments to identify other sources of additional funding for security personnel.

Comments on the Commission's Deliberations: Upon plenary review of the Access to Justice subcommittee recommendations, the full Commission added the last sentence to recommendation 7.3, to emphasize the need for enhanced security in family law and domestic violence cases.

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EXPEDITION AND TIMELINESS

Our Law says well, 'To delay justice, is injustice.'

--WILLIAM PENN

ISSUE 8: TIMELINESS OF CASE PROCESSING AND COURT PROCEDURES

The West Virginia Constitution provides that "justice shall be administered without sale, denial or delay." Similar admonitions are included in the RULES OF CIVIL PROCEDURE, the RULES OF CRIMINAL PROCEDURE, and even the CODE OF JUDICIAL CONDUCT which states: "A judge shall dispose of all judicial matters promptly, efficiently, and fairly." The Supreme Court embraced these principles when it adopted the RULES ON TIME STANDARDS FOR CIRCUIT COURTS in 1992. Compliance with time standards is monitored through a statistical reporting system that shows the age of the pending and disposed cases in a court. Judges receive individual reports detailing compliance rates on each type of case, as well as rankings that compare performance across judges and circuits.

At the time of the implementation of the TIME STANDARDS, procedural rules in many areas of the law were reviewed and amended to streamline and standardize case processing. For example, the RULES OF CIVIL PROCEDURE were amended to require judges to hold case scheduling conferences and to issue time frame orders. Still, delay is one of the most common complaints about the courts by litigants, attorneys, and the general public. The concern is not simply the time it takes from filing to final disposition in a case, but also the delay in obtaining rulings on motions, the promptness with which hearings and jury trials are conducted, and the delay inherent in certain scheduling practices.

When the American Bar Association adopted model time standards for case processing in 1984 it recognized that delay devalues judgments, creates anxiety in the litigants, and results in the loss or deterioration of the evidence upon which rights are determined. Accumulated delay produces backlogs that waste court resources, needlessly increase lawyer fees, and create confusion and conflict in allocating judicial time. For example, at the time of the filing of a personal injury case, the litigant may have already been in negotiation with the defendant or the insurer for almost two years. The fact that the court system may only delay the resolution of the matter further subjects the system to public criticism and the loss of the confidence.

In some types of cases, delay may be life-threatening such as child abuse or neglect, juvenile delinquency, family violence proceedings, elder abuse, and often-volatile

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divorce proceedings. Delay cannot be tolerated in these cases because it may lead to continued violence, abuse, injury and death. Even in the absence of the threat of physical or emotional harm, family law related matters are in crucial need of a timely resolution so that the family can be reorganized and stability restored.

The timeliness of case processing and court procedures was a frequent concern of those testifying at the Commission's public hearings or submitting written materials. While delay was not always the main focus, it often appeared to be an aggravating or contributing factor to general dissatisfaction with the system or the outcome of a particular case. Similarly, almost a quarter of the attorneys who responded to the Commission's Bar Survey ranked timeliness as one of the five most significant issues the Commission should address. Additionally, the Commission's Focus Group ranked timeliness as the third most urgent of the ten most important and fixable issues facing the court system.

At the end of calendar year 1997, the time standard compliance rate for general civil cases in West Virginia was just short of the goal of 75%. At 72%, the compliance rate for felony cases was also short of the goal of 80% compliance in criminal cases. In addition, statewide data often masks considerable variation in the performance of individual courts. For example, while statewide compliance in general civil jury cases was 74% as of December 31, 1997, more than half of the circuit courts were not in compliance, and a quarter of the circuit courts were below 50%. Compliance with time standards in divorce and other family law cases, which constitute almost 30% of the total pending civil caseload, has made only modest improvement over time. At 57% compliance for divorces and 64% compliance for other domestic cases, this area of the law continues to average well below the goal of 75% compliance.

To ensure the timeliness of case processing and court procedures, the Commission makes the following recommendations:

8.1 The **Supreme Court** should adopt uniform rules for filing and obtaining rulings on motions, including a time standard for dispositive motions and a requirement that judges enter an order explaining any delay in ruling on a dispositive motion. The Administrative Office should establish an exception reporting system for dispositive motions that are ripe for decision and have been pending for more than three months. The local court would be required to report such cases and explain the reason(s) for delay.

8.2 The **Administrative Office of the Courts** should employ three to four regional trial court administrators to provide training and technical assistance to local courts in the areas of court and case management.

Commentary: While the Administrative Office of the Courts monitors compliance rates and actively works with judges and other court personnel to improve case management procedures, the large number of judicial offices and the state's geography make it difficult to provide one-on-one technical assistance to courts experiencing problems.

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ISSUE 9: UNIFICATION AND COORDINATION OF COURT SERVICES IN CASES INVOLVING FAMILIES

Aside from traffic infractions, the average individual is most likely to interact with the court system in a domestic relations case. It is here that the court system touches the most households and where it has its most personal impact. National statistics show that almost 50% of current marriages will end in divorce. In West Virginia, divorces and other domestic relations case filings increased by 47% between 1990 and 1997, from 14,582 filings to more than 21,000. If juvenile delinquency, abuse and neglect, adoption, and domestic violence civil protective order cases are included, the total "family law" caseload would exceed 30,000 cases per year.

In the current court system, a family in crisis could encounter five different decision makers in the course of attempting to resolve its problems: a magistrate, to hold hearings on a domestic violence petition; a family law master, to hear evidence on a divorce; a circuit judge, to conduct an abuse and neglect proceeding; a different circuit judge to conduct a delinquency proceeding regarding the behavior of one of the children, and a panel of county commissioners to conduct a proceeding regarding a contested legal guardianship of a minor. This fragmented and duplicative system is clearly a strain on the resources of the court system of a small state. Moreover, when there is no coordination between different segments of the court system, it is possible that a judge hearing a child abuse and neglect case may not be aware of a pending divorce, a disputed non-testamentary legal guardianship, a juvenile delinquency proceeding, and/or a recent domestic violence petition. This lack of integration and consolidation does not serve the best interest of the families, interferes with the ability of the system to provide a quality resolution, and does not make efficient use of judicial resources.

Since 1980, the American Bar Association has studied and endorsed a "unified" approach to family law cases. In its 1993 study of the unmet legal needs of children and their families, the ABA recommended the adoption of unified family court systems in all jurisdictions. At a 1998 National Summit Meeting on Unified Family Courts, the ABA reiterated its support for a unified family court system. To date, approximately twenty-five states have either established a unified family court or a model unified family court pilot project.

While there is no one definitive model of a unified family court, those developed thus far share several common characteristics: (1) comprehensive jurisdiction of all family law cases, including juvenile matters; (2) a "one judge/one family" case assignment system; (3) provision and coordination of comprehensive social services; (4) support staff, such as case managers, who assist the court in moving cases through the court system, provide coordination of services, avoid duplication of services, and assist the court in gathering vital evidence; and (5) specialized training of judicial officers and support personnel.

To ensure the unification and coordination of court services in cases involving families, the Commission makes the following recommendations:

9.1 The **Legislature** should eliminate the Family Law Master system and the

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Juvenile Referees, effective 11:59 p.m. on December 31, 2000 and create a Unified Family Court, effective January 1, 2001.

Commentary: The Supreme Court can create a Unified Family Court as a division of the Circuit Court; however, the Legislature would have to add any additional judge positions necessitated by these changes, and would have to abolish the Family Law Master system.

Delay is inherent in the Family Law Master system due to the fact that masters are not circuit judges and, therefore, their final recommendations are appealable to circuit court. Masters are not permitted to hear contempt cases or enforce their orders. The addition of more family law master positions might allow some types of cases to be processed more rapidly, but this solution does not meet the need for an integrated approach to interrelated problems in the same family, ignores the inherent problems of fragmentation of court services to families in crisis; and does not address the delay caused by the constitutional restrictions on the masters' powers. Abolishing the family law master system and increasing the number of circuit judges so that they can hear family law cases is also not the solution. This change, without the creation of a "family court" or "family division," will not resolve issues relating to overlapping jurisdiction, conflicting court orders, and absence and/or duplication of services.

9.2 The **Legislature** should require that Unified Family Court judges gain office in the same manner, and have the same status, pay, and benefits as circuit judges.

Commentary: Other states with Unified Family Courts have determined that equal stature for Unified Family Court Judges and adequate additional support personnel are absolutely essential to the success of this plan.

The status of family court judges affects the court's ability to command necessary resources as well as attract and retain qualified personnel. In addition, there are places in this state where, because of geographical and case load considerations, judicial efficiency requires one person to function as both a general jurisdiction circuit judge and as a family court judge.

9.3 The **Legislature** should require that each family court judge have the following personnel: (1) a secretary, with the same duties and pay as a secretary to a circuit judge; (2) a court reporter, with the same duties and pay as a court reporter to a circuit judge; (3) juvenile probation officers with the same duties and pay as currently exist. In addition, two other support functions should be provided to effectively improve use of judicial resources: (4) a case manager, who would perform case intake, make referrals to alternative dispute resolution programs and outside agencies, coordinate family services, monitor case processing, and perform home studies in custody and visitation cases, but not abuse cases; and (5) a facilitator, who would negotiate in accordance with federal guidelines temporary child support amounts, prepare orders where parties are in agreement, establish *pro se* information programs and actively assist *pro se* litigants to ready their cases for presentation, coordinate with community-based volunteer programs, and oversee parent-education programs.

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Commentary: The job description of the facilitator would be written to satisfy the requirements for partial funding through the federal IV-D reimbursement for child support and paternity hearings. It should also be noted that both the case manager and facilitator functions could be filled in a variety of ways, either by the direct funding of these positions within the budget of the Court, by having the case manager function filled by a social worker from the DHHR staff who would be assigned solely to the Court, by having the facilitator function performed by staff hired through the use of the fund now providing law clerks for circuit judges, or through any other available funding method.

9.4 The **Legislature** should give the Unified Family Court exclusive jurisdiction over the following types of cases: civil child abuse and neglect; adoption; juvenile delinquency and status offender proceedings, except juveniles transferred to adult status; domestic violence final protective order hearings; emancipation; name change; paternity; divorce, property, and equitable distribution issues; custody; UIFSA (Uniform Interstate Family Support Act); elder abuse; all child support matters, including modifications; alimony; custody; visitation; contempt of any of these proceedings; legal guardianship of a minor, including non-testamentary guardianships; and foster care.

9.5 The Chief Justice of the **Supreme Court** should be granted the authority to appoint general jurisdiction circuit judges to specific unified family court cases, if an ethical conflict should arise, or if the family court judge is unavailable due to illness or absence from the area. The Chief Justice should also be granted the right to temporarily reassign portions of the family court caseload to general jurisdiction judges if he or she deems it necessary to effectively manage the caseload of that circuit.

9.6 Prior to the 1999 Legislative Session, the **Supreme Court** should recommend to the Legislature the number of judicial positions needed for the Unified Family Court caseload for each circuit, and the number of total judicial positions for each circuit. This assignment should be reviewed every eight years when the overall alignment of judicial circuits is reviewed.

Commentary: For example, in a larger judicial circuit there may be two judges assigned to the family law caseload as well as two general jurisdiction circuit court judges. In a small circuit, on the other hand, only one judge would be assigned to the family court caseload, and that judge might also be responsible for a small part of the general jurisdiction docket.

9.7 The **Supreme Court** should provide family court judges specialized training in appropriate areas of the law, such as domestic violence, child support issues, use of mediation, child abuse and neglect, and the social-psychological dynamics of family problems and their resolution. This training would be in addition to the training normally provided to new circuit judges.

Commentary: Research and experience in other jurisdictions have shown mediation to be an effective tool in the resolution of family law cases, because, unlike the adversary process, it does not fuel hostility, often results in better compliance, and reduces

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relitigation rates. Mediation has been made available to litigants in family law cases in West Virginia only in the last two years through a pilot project in the Eastern Panhandle. However, despite its many benefits, mediation programs are inappropriate for certain types of family law cases; namely, those involving issues of abuse and neglect, spousal abuse, or mental illness of a party, those cases where substance abuse might impair the ability of a party, and those cases where the child support formula is required to be applied.

In addition to the use of mediation, many of West Virginia circuit courts are utilizing parent education programs to lessen the number of contested custody cases in the court system by providing information to parents about how their children can be affected by their divorce and teaching methods of dealing with inevitable problems and questions. National studies have shown that when parent education is coupled with mediation the chances of successfully mediating a custody/visitation agreement are greatly improved.

9.8 The **Supreme Court** should make evaluation an integral part of the implementation and operations of the Unified Family Court system. That evaluation component should be designed to address the goals of all stakeholders in the system and measure both qualitative and quantitative outcomes.

Comments on the Commission's Deliberations: The Commission debated at length the recommendation that certain juvenile delinquency matters be heard by the Unified Family Court. All agreed that cases of juveniles transferred to adult status should not be heard by the Unified Family Court but proposed amendments regarding the included: vesting juvenile delinquency jurisdiction with the Unified Family Court, but allowing family court judges the option of transferring felony cases to the circuit court; and conversely, keeping felony juvenile delinquency jurisdiction in the circuit court, but allowing circuit court judges to transfer appropriate cases to the family court. Both proposed amendments were defeated by a slight majority of those voting.

In light of its recommendation to create a Unified Family Court, the Commission voted to endorse the then-proposed Judicial Reform Amendment. That amendment was drafted to amend Article 8 of the West Virginia Constitution, which contains the blueprint for the State's judicial system. The amendment was defeated during the general election held November 3, 1998.

ISSUE 10: PROVISION OF TREATMENT AND PLACEMENT OPTIONS IN JUVENILE DELINQUENCY AND ABUSE AND NEGLECT CASES

Whether children have been abused and/or neglected or determined to be delinquent, the court may order that they be removed from their homes. Approximately 3,000 of West Virginia's children were in out-of-home placements in June of 1998. About 2,153 of these children were in the custody of the Department of Health and Human Resources. The remaining 847 were in the custody of the Division of Juvenile Services. In addition, the 70 beds available for juvenile detention were filled to capacity during most of 1997. Each year, thousands of other children are at-risk of entering out-of-home placements, as evidenced by the more than 8,000 juvenile cases which

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were filed during 1997 alone. Many out-of-home placements might be avoided, or at the least shortened, if there was early provision of social services to families and children at the local level.

In 1997, the Legislature created the Child Placement Alternatives Corporation (CPAC), a public corporation, to address the needs of children in, or at-risk for, out-of-home placements. In October, 1997, after an extensive study of the situation, the CPAC Board of Directors concluded that over 48% of the children in out-of-state placement could be returned to their community if proper support services were available. In addition, they found that over 22% of the children studied could be returned to their community after only a short-term placement, three months or less, if adequate support services were available at the local level. In fact, only 7% of the children studied needed long-term placement in an out-of-state facility, typically the most expensive type of placement. As of June 30, 1998, 246 children remained in out-of-state facilities.

CPAC has not been the only group to review the placement of children in this State. Indeed, the issue of juvenile facilities and the provision of social services to children has been under almost constant study for the last five years. In 1994, the Supreme Court's Advisory Committee on Child Abuse and Neglect submitted a report. In 1995, then-Governor Gaston Caperton appointed a task force to review juvenile detention facilities, that made recommendations that have yet to be fully implemented. The Court Improvement Oversight Board, established in 1994, continues to study the court system's performance in child abuse and neglect cases and submitted its first report to the Supreme Court in 1996. In 1997, the Legislature created the Division of Juvenile Services and charged it with the task of developing a three-year plan for providing juvenile services. This plan was completed in early 1998. Most recently, the 1998 Legislature authorized the Regional Jail and Correctional Facility Authority to review juvenile detention facilities and report by October 1, 1998.

The availability of a balanced system of care could help to resolve problems before children must be removed from home. Such a system would include community-based mental health services, counselors to work with both families and children, educational assistance and tutoring, respite care, substance abuse counseling, and a variety of other services. If such a system were in place, a continuum of appropriate placement options would be available, including therapeutic foster homes, assessment foster homes, emergency shelters, psychiatric hospitals for out-patient and in-patient treatment, family counselors, and other levels of residential care.

The Commission on the Future has made extensive findings and conclusions about placement options in juvenile cases. These findings and conclusions may be found in the companion volume to this report available from the Administrative Office of Courts.

To ensure the provision of adequate treatment and placement options in cases involving juveniles, the Commission makes the following recommendations:

10.1 Prior to placing a child in an out-of-home placement, the **Supreme Court** in conjunction with **other related agencies** should provide information to a circuit judge listing all of the available options for both

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community services and for placement, and including the multi- disciplinary treatment team's recommendation.

10.2 The **Supreme Court** should continue to encourage other agencies and private organizations to establish a balanced system of care for provision of treatment to the State's children.

Commentary: Although these agencies and organizations are outside the direct control of the court system, it is important for the Supreme Court to continue to provide leadership in the identification of gaps in the system, and to foster development of plans to meet the needs of the children who are either in out-of-home placement or at-risk of such placement.

10.3 The **Supreme Court** should encourage the **Regional Jail and Correctional Facility Authority** to continue to review existing juvenile detention facilities, form a plan for creating new facilities, and give a high priority to the completion of these facilities to alleviate current overcrowding.

10.4 The **Legislature** should act to allow uninsured or underinsured families access to mental health services, including appropriate psychiatric residential placement, without the need to have the child placed in foster care to obtain such services. Such a provision would allow a low-cost alternative to high-end hospitalization or other costly out-of-home placement.

10.5 The **Legislature** and related agencies should establish additional in-state substance abuse treatment programs.

Commentary: Substance abuse treatment is the cause of many out-of-state placements for children. While it appears that our state has made some progress in this area, more facilities are needed. While this issue is outside of the direct control of the court system, the Supreme Court should take a leadership role in working with agencies and organizations to develop a plan for these services.

10.6 The **Supreme Court** in conjunction with the **State Bar** should provide additional training and information on treatment and placement options to lawyers and judicial officers who deal with these issues.

10.7 The **Supreme Court** should promulgate uniform rules of practice and procedure in juvenile delinquency cases.

10.8 The **Supreme Court** should expand the jurisdiction of the Court Improvement Oversight Board to include review of juvenile delinquency cases and services.

ISSUE 11: EFFECTIVENESS AND EFFICIENCY OF THE CHILD NEGLECT AND ABUSE CASE PROCESS

In 1994, the Supreme Court of Appeals began an extensive study of the court system's processing of child abuse and neglect cases. Concerned with problems of delay and lack of oversight identified in some abuse and neglect cases presented on appeal, the Court established an Abuse and Neglect Advisory Committee. This Committee was dissolved after completing its assigned tasks, including

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the development of a set of procedural rules for abuse and neglect cases. A new entity, the Court Improvement Oversight Board, was created to continue the work of monitoring and improving court performance in the area of child abuse and neglect. Significant changes in the processing of abuse and neglect cases have occurred as the result of the Supreme Court's and Legislature's implementation of the recommendations of these two bodies.

In the Fall of 1998, the Court Improvement Board will launch a pilot project in the Twenty-Third Judicial Circuit (Berkeley, Jefferson, and Morgan Counties) to implement a model system for court performance in abuse and neglect cases. This program will include cross-disciplinary training for all participants in abuse and neglect cases; free continuing legal education training and a mentoring program to encourage lawyers to represent parents and children in these actions; rigorous caseflow management procedures; enhanced information system development; and an emphasis on early intervention, assessment and effective planning. Successful features of this pilot project will be replicated in other circuits.

The number of child abuse and neglect cases reaching the courts in West Virginia has steadily increased in the last eight years. During that time, petitions filed in circuit court increased by 88 %, from 426 in 1990 to 801 in 1997. Despite the progress made in the last four years and the promising on-going efforts, the current structure of the court system is not well-designed to absorb the demands of this increased volume and ill-suited to bring about a timely and comprehensive resolution of these matters.

Regarding compliance with time standards, only a little over a third of the pending juvenile delinquency cases are in compliance with time standards, as are only slightly more than half of the child neglect and abuse cases. While there has been great improvement in the processing of child abuse and neglect cases, in some circuits, these cases as well as juvenile delinquency cases rank near the bottom of all categories in time standard compliance. Moreover, there are significant differences between circuits, with some areas reporting near 100% compliance, while other circuits struggle with 30 to 40% compliance rates. Full compliance with time standards is particularly critical in abuse and neglect and juvenile cases as these have the highest risk of imminent danger and long term irrevocable damage to human life and welfare.

To ensure the effectiveness and efficiency of the child abuse and neglect case process, the Commission makes the following recommendations:

11.1 The **Supreme Court** should employ an Oversight Coordinator to identify systemic problems in the investigation, treatment, and resolution of cases involving child maltreatment or juvenile delinquency, recommend administrative or legislative changes necessary to address these problems, provide technical assistance to local or regional multidisciplinary treatment teams (MDTs) in coordination with Department of Health and Human Resources (DHHR) staff, refer specific cases to an attorney for an independent decision as to whether a special *guardian ad litem* should be appointed, perform random compliance audits on the use of MDTs and the filing of case plans, and work to ensure compliance with time standards, statutes and procedural

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rules in child abuse and neglect and juvenile delinquency cases.

Commentary: MDTs are treatment planning and implementation teams that are specifically designated for each child. The team is composed of the child's parents and counsel as well as treatment professionals involved with the child such as school officials, counselors, social workers, and juvenile probation officers.

11.2 In coordination with the **State Office of Technology**, the **Supreme Court** and the **DHHR** should develop an integrated computer system to monitor the progress of child abuse and neglect cases in the system.

11.3 The **Supreme Court** and **related agencies** should develop procedures to ensure that all children in the State's custody, including juvenile delinquents, have written case plans; and that case plans are disseminated to all parties and filed with court.

Commentary: The latter mandate could be satisfied if a certificate of service listing all parties served and the date that the plan was filed with the court was required to be appended to all case plans.

11.4 The **Supreme Court** and the **State Bar** should continue extensive training of judges and lawyers in the area of child abuse/neglect. This training should specifically encourage acceptance and use of Court Appointed Special Advocate (CASA) volunteers.

Commentary: CASA volunteer programs are available in sixteen counties in this state. CASAs are trained community volunteers, appointed by circuit court order, who provide the court with a full report on the child's circumstances and insure that the child is moved through the child welfare and court systems in a sensitive and expedient manner. The CASA volunteer gathers information relating to the child's welfare through interviews, document review and observation, and conducts an independent assessment of the facts. The CASA then prepares a written report with recommendations for the course of action that is in the best interest of the child and presents it to the judge and all parties in the case. The CASA also monitors the progress of the case and keeps the court informed as to compliance with court orders.

11.5 The **Legislature** and/or the **Supreme Court** should establish a fund to provide grants to assist CASA programs statewide.

Commentary: The expansion of the CASA program in the State has been slow and sporadic due to a lack of funding for training, supervision, and coordination of the volunteers. As a result, there is a serious disparity in the availability of this essential program. In part, this disparity is based upon economic factors which favor wealthier, urban circuits--it also results from the lack of funds to sustain programs which were successful in getting start-up funds. Funding for the CASA program would provide communities the opportunity to employ a coordinator to train volunteers, organize the appointment of volunteers to individual cases, supervise the volunteers, and provide technical assistance and expertise. Without funding assistance from the State, it is unlikely that CASA programs will be viable in many counties. This disparity in services to needy children is unjust and unfair. Community-based CASA programs would organize, develop a written plan for their delivery of services, and then apply to the Supreme Court for a grant to cover that portion of the expenses of their program that cannot be covered by local funds. The Court would administer the fund, develop guidelines for the application and funding

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process, issue grants to the qualifying programs, and monitor effective and cost-efficient use of the funds.

11.6 The **West Virginia University College of Law** and **West Virginia Continuing Legal Education** should continue to make available courses in the area of family law; for example domestic violence, child abuse and neglect, or child support.

Comments on the Commission's Deliberations: The subcommittee that addressed this issue proposed that the State Bar amend its Continuing Legal Education (CLE) requirements to include that at least three credit hours per CLE reporting period must be earned in an area of family law; for example, domestic violence; child abuse and neglect, or child support. After full discussion of the matter, a majority of the Commission rejected this proposal, and in its place substituted recommendation 11.6.

ISSUE 12: PERCEPTION OF FRIVOLOUS LITIGATION AND EXCESSIVE DAMAGE AWARDS IN CIVIL CASES

Tort cases represent a relatively small percentage of the total civil docket nationwide, but the tort liability system is the subject of much debate in Congress, state legislatures, and the media. Businesses and insurance companies are concerned that increased litigiousness, especially in the area of personal injury law, drives up the cost of products, services, and insurance. In response to the demand for change, many states implemented reforms in tort laws in the 1970s and 1980s.

The American Bar Association (ABA) reported in 1996 that tort cases comprise less than 2% of the total caseload and only 6% of the civil caseload in state courts. The ABA also noted that while other categories of civil litigation, such as family law cases, are expanding, the volume of tort litigation has been declining since the early 1990s. Statistics compiled by the National Center for State Courts (NCSC) also do not support the idea of a tort litigation "explosion." Utilizing data from 16 state courts, the NCSC found that total tort filings rose 69%, or an average of 3% per year, between 1975 and 1996.

Statistics on the number of tort cases filed in West Virginia are not available because these cases are not distinguished from other general civil case filings in the caseload reporting system maintained by the Administrative Office of the Courts. However, the number of general civil cases, which includes tort actions as well as contract cases, debt collection suits, extraordinary writs, and other civil matters, decreased by 23% in the last five years, from almost 20,000 cases in 1993 to just over 15,000 in 1997.

Suits filed by prisoners are also included in the debate about frivolous litigation. The most common prisoner suits are habeas corpus petitions which are filed by incarcerated individuals seeking to overturn convictions or gain release from confinement. It is not uncommon for multiple habeas petitions to be filed by the same inmate. Since they are usually prepared without the assistance of legal counsel, the pleadings are often incomprehensible or incomplete and fail to state grounds for relief. Habeas corpus petitions are time consuming for court staff and the personnel involved in transporting prisoners from correctional facilities to the

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courthouse.

The Commission reached no consensus on the need, or lack of need, for comprehensive tort reform in West Virginia. However, it did make extensive findings and conclusions about tort litigation in West Virginia and across the nation. These findings and conclusions may be found in the companion volume of this report available from the Administrative Office of Courts.

To assess the perception of frivolous litigation and excessive damage awards in civil cases, the Commission makes the following recommendations:

12.1 The **Supreme Court** should undertake a study of the tort liability system, including the collection of data on the size of jury verdicts in each category of civil case, the number of defense verdicts, the number and amount of punitive damage awards and post-trial outcomes. The results should be disseminated to the general public through news releases.

12.2 The **Administrative Office of the Courts** should institute a reporting system for habeas corpus petitions filed in the circuit courts.

12.3 The **Supreme Court** should continue to train circuit judges in the methods that are available to discourage indiscriminate filing of cases and defenses, such as sanctions, dismissals, and payment of another party's attorneys fees. Specific information should be provided on how to handle post-judgment motions for the review of damage awards.

12.4 The **Supreme Court** should continue to train judges on the benefits of using time frame and scheduling orders in civil cases, so that cases that are not being vigorously prosecuted or cases that have no basis in fact can be identified at the earliest possible date.

12.5 The **Supreme Court** should continue to train judges on the benefits of mediation and other alternative dispute resolution mechanisms in order to facilitate the efficient and cost-effective settlement of cases.

12.6 The **Supreme Court** should update its post-conviction habeas corpus form to include guidelines and instructions, and disseminate the form to inmates for use. Consideration should also be given to providing other forms and instructions for inmates use and developing systems to facilitate in-house review and assistance in habeas corpus proceedings.

ISSUE 13: INTEGRATION AND COORDINATION OF TECHNOLOGY IN THE COURT SYSTEM

To meet the demands of the Twenty-first century, it is imperative that there be a comprehensive plan for the integration and coordination of technology within the court system. Presently, every judge and family law master office has computer capability. Judges have access to legal reference materials on-line and e-mail through the Internet.

At the magistrate court level, Supreme Court funding and oversight of the computerization process has ensured software uniformity. Forty-four magistrate courts are

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currently computerized and use standard software. All magistrate courts are slated to be automated by the end of fiscal year 1999.

A different situation exists at the circuit court level where individual counties, not the Supreme Court, have budgetary control. Presently about 45 of the 55 circuit clerks' offices are automated. Twenty-five of those counties have uniform case management software provided at no charge by the Supreme Court. The other 20 counties use a variety of unrelated software systems.

At both levels of court, computer systems are generally not networked intra-county, much less inter-county, nor are they linked with the Administrative Office of Courts or other state agencies. There is little information transfer or communication capability. Moreover, some courts lack even fundamental communication technology, such as additional telephone lines, facsimile machines, and electronic library services.

The Supreme Court's technology plan requires that all court employees be provided with the most advanced personal computers and up-to-date software. All judicial offices in larger counties, including probation and clerk of court offices, will be linked via file servers. The model for this type of system is now being fine-tuned in Cabell County and will include state-of-the-art "citrix servers" which alleviate the need to continually update personal computers. The technology plan also calls for the use of standard software in all circuit clerk offices and computer terminals in all courtrooms. In addition, the court system will make the hardware and software changes necessary for the federally-mandated centralized reporting of criminal case dispositions, domestic violence protective orders, and, in the future, child support orders.

At the same time, the State and the judicial system, in conjunction with Bell Atlantic-WV, are embarking on one of the most promising and progressive technology projects in the nation. A pilot project on the use of ATM (Asynchronous Transfer Mode) technology is currently underway in Kanawha and Cabell Counties. ATM technology provides video conferencing between multiple locations and is capable of supporting high speed video, voice and data applications simultaneously. The pilot project is initially using the technology for the initial appearances of criminal defendants, but the potential applications seem almost limitless and span a number of court system operations. ATM technology will eventually be implemented on a statewide basis; 25 counties are scheduled to be up and running by the end of 1999. When the installation process is complete, West Virginia will be the first state in the nation to have this technology available statewide.

To ensure the integration and coordination of technology in the court system, the Commission makes the following recommendations:

13.1 The **Supreme Court** should continue its full support and involvement in the testing and expansion of ATM technology.

Commentary: The ATM technology has tremendous potential for use in the court system. In addition to the "initial appearance" pilot project in Cabell and Kanawha Counties, it could be used to provide cost-efficient, divorce-related parent education programs to rural counties, hold emergency domestic violence hearings when the judicial officer must attend to a docket in

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another county, allow domestic violence victims to file emergency petitions from a shelter, provide health care consultations to prisoners, allow a magistrate on night-call duty in one county to respond to emergencies in another county, allow the State Medical Examiner to provide testimony in county courts, and facilitate the testimony of child witnesses outside of the courtroom.

13.2 The **Supreme Court** should appoint a committee on "technology in the courts" composed of representatives from all segments of the judicial system. This committee should encourage and support the use of technology in the courts; set policies and establish rules on its use; disseminate information to the public; and insure that the implementation of technological advances within the court system is done in partnership with the Governor's recently created **State Office of Technology**.

13.3 The **Supreme Court** should standardize and network computer systems in both circuit and magistrate court, across other judicial offices, and to related agencies and organizations. Software systems should have full case management functionality.

13.4 The **Supreme Court** should provide electronic mail, fax capabilities, and other communication technologies in every county courthouse for the use of judicial and court officers and all support staff.

13.5 The **Supreme Court** should pursue the rules and technology to allow for electronic filing, and consideration should be given to instituting a pilot project on electronic filing of mass litigation cases.

Commentary: Electronic filing of law suits and related pleadings is allowed in courts across the nation, however, West Virginia has neither the enabling rules nor the necessary technology and programming to permit electronic filing.

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EQUALITY, FAIRNESS AND INTEGRITY

Injustice anywhere is a threat to justice everywhere. We are caught in an inescapable network of mutuality, tied in a single garment of destiny. Whatever affects one directly, affects all indirectly.

--MARTIN LUTHER KING, JR.

ISSUE 14: REPRESENTATIVENESS AND INCLUSIVENESS OF JURY PANELS/UTILIZATION AND EDUCATION OF JURORS

The statutes governing petit and grand jury selection were substantially re-written in 1986, completing a long overdue modernization of the entire jury system. Perhaps the most notable change was the switch from a subjective "keyman" method of selecting potential jurors to a system requiring random selection from a combination of voters registration and drivers license lists.

In 1991, the Supreme Court adopted "STANDARDS RELATING TO JURY USE AND MANAGEMENT," a set of guidelines designed to maximize the efficiency and effectiveness of the jury system while minimizing the inconvenience to individual citizens. Like the American Bar Association's standards relating to jury use, West Virginia's version is premised on the assumption that efficient administration and management will guarantee preservation of the jury system and enhance the quality of the decision-making process.

Since 1991, little in the way of true jury system reform has occurred in West Virginia. Terms of service, juror orientation, jury selection processes, and other aspects of jury duty have remained virtually unexamined and unchanged in most local courts. Testimony at the Futures Commission's public hearings and in written submissions expressed concerns about the representativeness of petit jury panels and the treatment and compensation of jurors. Additionally, almost a quarter of the respondents to the State Bar survey ranked the jury issue in the top five items the Commission should consider. The Focus Group ranked the issue of jury representativeness and utilization among the ten most important, fixable and urgent issues facing the court system. Broader participation results in a better cross-section of the public serving on jury duty and distributes the burden
as well as the educational benefits of service more equitably across the eligible population.

Meanwhile, across the nation, the jury reform movement has gone beyond modifying the simple mechanics of jury selection to include addressing issues such as the communication of information to jurors, juror stress, and the juror decision-making process. Other jurisdictions have found that certain techniques and innovations are effective in conserving juror time, saving costs, and

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increasing the willingness of citizens to serve as jurors.

In 1997, the Judicial Improvement Committee of the State Bar submitted a report on jury reform to the Supreme Court and, subsequently, to this Commission. In line with the growing national recognition that jurors must be permitted to become more active in a trial, the Committee recommended that: orientation materials be augmented; preliminary jury instructions be expanded; jurors be allowed to take notes and be provided notebooks in appropriate cases; and "plain English" be used in jury instructions with copies of instructions provided to jurors. The Committee also raised concerns about the length of the term of service and the privacy rights of jurors.

To ensure the representativeness and inclusiveness of juries and the education of jurors, the Commission makes the following recommendations:

14.1 The **Legislature** should set the term of jury service from no less than one week to no more than six weeks. The actual term of availability, from one to six weeks, should be tailored to meet the needs of the particular court.

Commentary: The majority of courts in the state have a term of jury service that is the same as the calendar term, generally a period of three to four months. Even if the use of a telephone call-in system prevents unnecessary juror appearances, the period of availability may still be a problem. Calling the court each evening for weeks and avoiding potential scheduling conflicts is as burdensome as reporting. One-third of the jurors completing exit questionnaires rated the court's scheduling of their time as merely adequate or poor. Shorter terms of service reduce the personal and financial burden upon those serving and their employers and permit persons to serve who would otherwise be excused for personal or community hardship reasons.

14.2 The **Supreme Court** should provide standardized computer software to all court clerk offices to support the change to a shorter term of service, including the selection and summoning process, attendance records, and payroll.

Commentary: Because a reduced term of service will greatly increase the administrative effort and cost required to qualify and summon more jurors, it is critical that court clerks have improved automation support.

14.3 Through its rule-making authority, the **Supreme Court** should require that judges: provide a more thorough juror orientation and pre-trial and post-trial instructions; permit juror note-taking during trial, and testimony review by video or transcript during deliberations; and give jury instructions in "plain English."

14.4 In order to provide a more willing juror pool, the **Legislature** and the **Supreme Court** should increase juror reimbursement so that jurors do not have to "pay to serve."

Commentary: While juror reimbursement is not meant to compensate for lost wages, the current juror reimbursement of $15 per day and $.32 per mile may not cover out-of-pocket expenses.

14.5 The **Supreme Court** should require local courts not to excuse potential jurors from service except in cases of extreme hardship.

14.6 The **Supreme Court** should require local courts to make provisions for juror

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privacy in cases where there is a fear of potential retaliation or the threat of harm.

14.7 The **Legislature** should address the issue of equalizing the number of peremptory challenges for the prosecution and defense in criminal trials after a full and complete hearing on the issue by all interested parties.

Comments on the Commission's Deliberations: After considered deliberation, the Commission modified recommendation 14.1 by removing the language "or one trial" from the phrase "no less that one week to no more than six weeks or one trial."

The Commission also wrestled with a proposed recommendation that would have required future magistrates to be licensed to practice law. That recommendation was defeated by a majority of the Commission's members.

ISSUE 15: INTEGRATION OF ALTERNATE DISPUTE RESOLUTION MECHANISMS IN THE COURT PROCESS

Alternative dispute resolution (ADR) is a collection of strategies for resolving legal disputes without the time and expense ordinarily associated with conventional trial court process. Some of the most commonly used ADR methods include mediation, arbitration, early neutral case evaluation, mini-trials, summary jury trials, and judicial settlement conferences.

Perhaps the most widely-used form of ADR is mediation. Mediation is an informal, non-adversarial process where a neutral third person, the mediator, helps the parties to resolve some or all of the differences between them. Decision-making authority remains with the parties; the mediator does not act as a judge but instead, assists the parties in reaching their own settlement agreement.

Throughout West Virginia, many different governmental bodies are using ADR to resolve legal disputes on an *ad hoc* basis.

During the early 1990s, the United States District Court for the Northern District of West Virginia began a mediation program known as "Settlement Week." The parties in cases assigned to the program by the District Court must attempt to mediate their dispute. The cases are mediated by volunteer attorneys trained in mediation techniques. On average, thirty to sixty percent of the cases mediated during a settlement week are successfully resolved.

In 1993, the Supreme Court of Appeals adopted the RULES OF PROCEDURE FOR COURT-ANNEXED MEDIATION IN THE CIRCUIT COURTS OF WEST VIRGINIA. The RULES govern mediation of civil cases in the circuit courts, including appeals and administrative orders, but excluding domestic relations matters. Under the RULES, the State Bar is required to maintain a list of attorneys qualified to serve as mediators in the circuit courts. To be included on the State Bar's list, an attorney must take the Bar's basic mediation course, and have mediated at least five disputes.

In 1996, the Kanawha County Circuit Court instituted its own settlement week project known as S.W.A.R.M. Week. Held biannually, each of the five S.W.A.R.M. Weeks held to date have resolved about half of

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the two to three hundred cases mediated. Local attorneys volunteer their time to mediate the cases. S.W.A.R.M. Weeks have significantly lightened Kanawha County's civil case docket.

Also in 1996, the Supreme Court instituted the "Parent Education and Mediation Pilot Project" in Berkeley, Jefferson and Morgan Counties. This on-going project addresses the impact on children of custody and visitation disputes and parental separation. Parents of minor children who file for a divorce must attend a parent education class that addresses the difficulties children may encounter and offers helpful information to assist families through the divorce process. Mediation of child custody and visitation is mandatory unless the case is not appropriate due to the incidence of domestic violence or a marked imbalance of bargaining positions between the parties. About half of those referred to mediation have resolved their custody and/or visitation disputes.

Over the past few years, several private commercial enterprises have been created that offer mediation services. Some of these groups are comprised of retired judges. Additionally, many other individuals, both attorneys and non-attorneys, advertise that they will mediate a case for a fee.

In 1998, the Legislature created the "West Virginia Alternate Dispute Resolution Commission" to: study ways to finance and structure ADR programs; define program goals and objectives, and determine the types of cases to be resolved by those programs; make the programs uniform statewide; and evaluate the advantages of establishing certification or licensure requirements for ADR practitioners. The ADR Commission is scheduled to issue its report by the end of 1998.

In 1998, the Supreme Court established a workers' compensation mediation pilot project to: return control of a case to the parties; allow for speedier resolution of cases; reduce costs paid by parties; and to reduce the Court's caseload and the time spent on workers' compensation cases. The Court selects cases for mandatory mediation, but any party may opt for mediation. An oversight committee will evaluate the project in December 1998.

Although each of these applications of ADR is beneficial to the judicial system, West Virginia has no statewide office that coordinates, oversees or synthesizes the use or integration of ADR, or that oversees, trains or certifies ADR practitioners. Many other states have an Office of Alternative Dispute Resolution that performs these functions.

To ensure the integration of ADR mechanisms, the Commission makes the following recommendations:

15.1 The **Legislature** should consider the recommendations of the West Virginia Alternate Dispute Resolution Commission along with the following.

15.2 The **Legislature** should create a statewide "Office of Alternate Dispute Resolution" to systematically integrate ADR into the court system and increase the use of ADR statewide.

15.3 The **Office of Alternate Dispute Resolution** should: standardize practice and procedural rules; establish qualifications and ethics rules for ADR

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practitioners; set out project priorities; determine who will train practitioners; establish a training protocol and continuing education programs; provide technical assistance to start ADR programs in counties that do not have them; educate the public and appropriate governmental agency personnel about ADR; formulate means to gather statistical data needed to analyze the impact of ADR use; and allocate funding and grants.

15.4 ADR should be employed in the following types of cases: family law cases, except those cases involving domestic abuse or violence against an adult or child; civil litigation; state agency and labor cases, including cases filed with the State Employee Grievance Board; workers' compensation claims and appeals; public education-related cases; and environmental-impact cases.

15.5 Parties to appropriate civil cases should be required to attempt to resolve disputes through ADR methods.

Comments on the Commission's Deliberations: One of the subcommittees that addressed this issue proposed that mediation be attempted in family law cases involving domestic abuse or violence against an adult or child. Another subcommittee also recommended mediation and parent education in all family law cases but excluded from mediation all cases involving family violence. After a review of the available literature of programs mediating instances of family violence, the full Commission rewrote the recommendation to read as it appears now in recommendation 15.4.

ISSUE 16: APPROPRIATENESS OF THE ADVERSARIAL MODEL IN MENTAL HYGIENE PROCEEDINGS

West Virginia uses an adversarial model of mental hygiene. Mental hygiene commissioners hear petitions for the involuntary commitment of persons alleged to be mentally incompetent, mentally retarded or addicted and, as a result of that condition, are a danger to self and others. This person is known as the respondent. The petition for involuntary commitment is filed by an applicant who is represented by the prosecuting attorney's office. The county sheriff is required by statute to transport and to maintain custody of the respondent until the petition is denied or the respondent is taken to a mental health facility.

Most mental hygiene cases begin with an event or crisis that causes the applicant, often a family member, to believe that a person needs to be hospitalized. The applicant files a verified petition for commitment with the circuit clerk's office. The mental hygiene commissioner reviews the petition to determine if the allegations are sufficient to have the respondent taken into custody for an examination by a physician or psychologist. Once approved, the commissioner issues a "pick up" order that is given to the county sheriff's department, and appoints counsel for the respondent.

The sheriff's department delivers the the respondent to a physician or psychologist for an examination at, or arranged by, a community mental health center. If the physician or psychologist finds evidence of mental illness, mental retardation, or addiction, and evidence that, due to that condition, the respondent is a danger to self or others, the

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physician or psychologist "certifies" the respondent. If the examination does not take place within three days, the respondent must be released.

Once the respondent has been certified, he or she must be taken before the mental hygiene commissioner for a probable cause hearing within 24 hours. At the hearing, the commissioner decides whether there is probable cause to believe that the respondent is mentally ill, mentally retarded or addicted, and is a danger to self or others. If the commissioner finds probable cause, the respondent is taken to a mental health facility for a detailed examination to be conducted by a staff physician at the facility within five days. If necessary, an agent of the mental health facility must file for the respondent's final commitment within ten days following the date of admission. If any of these time deadlines are not met, the respondent must be released. Less than 20% of all commitment cases proceed to a final commitment hearing and less than a quarter of these result in a final commitment order.

Some chief judges require magistrates to hold emergency detention hearings when the mental hygiene commissioner or a judge is unable to hear the petition. The chief judge may also require magistrates to preside over probable cause hearings. Mental hygiene commissioners and those magistrates required to hold probable cause and emergency detention hearings must attend a training course provided by the Supreme Court.

Testimony presented at the public forums indicated that the present mental hygiene system is antiquated and demeaning. The primary concern is that the family member who petitions for the respondent's involuntary commitment often has to testify against his/her loved one. This procedure can destroy family bonds when they are needed most. However, adversarial models of commitment are not diametrically opposed to therapeutic models; in fact, therapeutic models are often integrated into the adversarial process. Moreover, the adversarial model serves an important role in preventing respondents from being wrongfully committed to mental health facilities. Adversarial mental hygiene proceedings may be appropriate if changes occur that result in family members not having to testify against their loved ones.

Given the present adversarial model in mental hygiene proceedings, the Commission makes the following recommendations:

16.1 The **Legislature** should require community mental health centers to provide crisis intervention services to all persons likely to be committed prior to the commitment hearing. Mobile, face-to-face, crisis intervention services should also be provided by community mental health centers.

Commentary: The State's fourteen community mental health centers assist persons in crisis before their problems become so severe that commitment is warranted. Moreover, the use of crisis intervention teams at these centers has resulted in a 50% reduction in "final commitment" proceedings.

16.2 The **Department of Health and Human Services' Office of Behavioral Health Services** needs to exert greater oversight control over the community mental health centers so that the services provided are consistent and quality is ensured.

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16.3 The **Legislature** should require the county prosecutor or the mental health center (as opposed to family members) to present petitions for commitment.

16.4 The **Legislature** should appoint a "Mental Health Commission" to review the current mental hygiene system. The Commission should be made up of members of the legislature, governor's office, judicial system, advocates, defense counsel, prosecutors, family members and other appropriate individuals. Among other things, the Commission should consider: whether mental hygiene commissioners should be allowed to extend a continuance beyond forty-eight hours in cases of medical emergency; and whether mental hygiene procedures should include a pre-hearing screening process provided by the community mental health centers.

16.5 The **Legislature** should require, and the **Supreme Court** should prepare, continuing mental health education programs for judges, mental hygiene commissioners, magistrates and prosecutors. The number of hours and specific topics addressed should be determined by the Mental Health Commission.

ISSUE 17: EFFECTIVENESS OF CURRENT SENTENCING POLICY

Ideally, a sentencing policy articulates three standards: (1) the principles to be followed in sentencing; for example, sentences should be proportional to the severity of the crime; (2) the goals to be achieved; for example, time served in prison by violent offenders should be increased; and (3) the resource priorities; for example, community punishment options are to be used first with non-violent offenders with little or no prior record. An effective sentencing policy must be supported by adequate prison, jail and community resources.

The dramatic change in sentencing philosophies that swept the rest of the country in the 1970s had little impact in this State. West Virginia does not have a sentencing policy; judges have wide discretion in sentencing except for legislatively-mandated maximums, and a parole board determines the actual length of time offenders spend in custody. In many other jurisdictions, structured sentencing systems, such as sentencing guidelines, "three strikes" provisions, and mandatory minimums, have constrained judicial discretion and replaced parole boards.

The most beneficial impact of a sentencing policy is its ability to help reduce correction-system overcrowding. West Virginia has had a problem with prison and jail overcrowding for the last decade. In a pattern repeated in many states nationwide, the solution to this problem in West Virginia has been to construct new correctional facilities. However, without some attempt to address the larger policy issues (such as alternative punishments, prison intake, management of capacity and resources, funding sources, and public attitudes), construction of additional beds will continue to provide only temporary relief. For example, Mount Olive Correctional Center opened in 1994 with space for approximately 600 inmates. However, it reached capacity shortly after it opened because many prisoners had been housed in regional and local jails waiting for prison space to open up. Moreover, in August, 1998, the

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Division of Corrections projected the State will have 4,509 adult inmates by mid-2001, with bed space for only 4,085. The Division called for the construction of an 1,800-bed, $100 million medium security prison in order to avoid severe overcrowding that could result in the mandated early release of prisoners.

To ensure the effectiveness of current sentencing policy, the Commission makes the following recommendations:

17.1 The **Legislature** should work with the court system, the State Police, Corrections, and Probation and Parole to establish an integrated information system capable of collecting and analyzing data on criminal case dispositions.

Commentary: West Virginia is just beginning to develop criminal justice research and statistical analysis capacity. As a result, there is little information or analysis available on sentencing trends or the impact of changes in sentencing laws. This lack of data makes its difficult for officials to accurately predict the need for additional beds in jails and prisons.

17.2 The **Legislature** should establish a Commission on Sentencing Policy composed of representatives of all branches of the government, to conduct research on sentencing trends, establish sentencing goals and priorities, identify effective intermediate sanctions, and evaluate the impact of changes in sentencing policy on correctional resources.

17.3 The **Legislature** should explore the feasibility of utilizing specialized facilities in order to remove specific non-violent offenders, such as those arrested for DUI, from prison and jail facilities.

Commentary: The use of intermediate sanctions, sentences that are between traditional probation and incarceration, reduces the need for prison space while maintaining public safety and offender accountability. Boot camps and community service are examples of intermediate sanctions. Another alternative is the use of specialized facilities, such as the DWI Correctional Treatment Facility in Baltimore, Maryland. Placement at such a facility provides an inmate the opportunity for rehabilitation through treatment. A court-imposed restitution fee is assessed on all participants.

17.4 The **Legislature** should take victims' rights into account when determining sentencing policy and sentence structures.

ISSUE 18: PERCEPTION OF BIAS AND DISPARATE TREATMENT

It is fundamental to the integrity of the court system that it be free of bias. The special role of the judiciary in our system of government demands not only that justice be dispensed impartially, but that the perception of impartiality be maintained.

Bias can affect the judicial process in multiple ways. First, individuals can be denied rights or burdened with responsibilities solely on the basis of their membership in a particular group. Second, individuals can be subjected to stereotypes that ignore their individual circumstances. Third, individuals can be treated differently on the basis of their membership in a particular group where membership in the group is irrelevant to the dispute at hand. Finally, a particular group can be subjected to a law, rule, policy, or practice which produces worse results for it, than for other groups or the population as a whole.

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A number of people spoke or sent letters to the Commission about the issue of bias and disparate treatment in the court system based upon gender, race, political influence, economics or the existence of a "good old boy" network.

Regarding bias on the basis of race, the Commission heard testimony that addressed the African-American community's lack of confidence in the court system. This lack of confidence was engendered by: the under-representation of African-Americans on juries; disparate sentencing practices; inequality in setting bond in criminal cases; lack of enforcement of hate crime statutes; and under-representation of minorities in the law enforcement and judicial system workforces. The Commission also received a 1995 report prepared by the Juvenile Justice Committee, *Minority Youth and the Juvenile Justice System*, which showed that African-American juveniles had a 16% arrest rate while constituting only 3% of the population. African-American juveniles were also committed to detention centers at twice the rate of non-minority juveniles, and the proportion of African-Americans adjudicated delinquent was the same as that for non-minority youth, again out of proportion with the representation of African-Americans in the total juvenile population.

More limited concern was expressed about perceived pro-prosecution bias on the part of judicial officers. The criminal justice process has multiple points where bias can affect outcomes: arrest; filing of criminal charges; setting bond; the jury trial; and sentencing. It is essential that data on the outcomes of these events, the crime, and the characteristics of the defendant be made available so that patterns of disparate treatment and biased decision-making can be identified.

Considerable testimony and many written submissions were received by the Commission on the perception of bias against males in child custody, child support, and visitation cases. Both the "primary care taker rule" in custody decisions and the statutory formula used to calculate child support were cited as sources of this bias. The perception of bias in this area of the law was previously documented by the Supreme Court Task Force on Gender Fairness in the Courts in its 1996 Final Report. The Task Force on Gender Fairness in the Courts also documented patterns of bias against women and men in other areas of family law, domestic violence cases, criminal law, civil damage cases, and the court as a work environment.

While it is difficult to document the existence and effects of what some respondents termed the "good old boy" network, national level research conducted by the Rural Justice Institute found that the small scale, insularity, and shared history of many rural communities results in courts where familiarity, knowledge of players and parties, and comity are the driving forces. This environment of interconnection is further enhanced by the relative homogeneity of the bench, bar, and court system personnel.

Little quantitative or rigorous qualitative information currently exists to validate these perceptions. Bias does not always appear in forms that are easily measured or readily assessed. However, the court system must be concerned with bias and disparate treatment regardless of its source and assume a leadership role in eliminating laws, rules, practices, behaviors and attitudes that produce

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this perception.

With the goal of eradicating bias and disparate treatment in the courts and the perception of the same, the Commission makes the following recommendations:

18.1 The **Supreme Court** should participate in the development of criminal justice and court information systems designed to include the data necessary to document bias and discrimination in all areas of the system. At a minimum, information on the gender and racial/ethnic background of court participants should be available.

18.2 The **Supreme Court** should integrate diversity training into the educational programs of all judicial officers and court personnel. The issue of bias and discrimination should be addressed in all relevant substantive and procedural courses as appropriate.

18.3 The **Supreme Court** and the **Bar** should encourage an increase in the number of women and minorities on the bench and in the judicial workforce.

18.4 The **Supreme Court** should increase its public education efforts so that citizens understand the role of courts and their rights and responsibilities in the court system. Providing information on the jury selection system should be a priority.

18.5 The **Legislature** and the **Supreme Court** should explore methods to enhance the representativeness of jury pools including the use of additional source lists to increase the inclusion of minorities.

ISSUE 19: THE APPROPRIATENESS OF MAGISTRATE COURT JURISDICTION, ESPECIALLY IN DOMESTIC VIOLENCE CASES

The magistrate court system, created under the Judicial Reorganization Amendment of 1974, replaced the Justice of the Peace courts which existed in the Virginias since 1616. That constitutional amendment also placed the magistrate courts under the general supervisory control of the Supreme Court of Appeals which is responsible for promulgating magistrate court rules.

Each of the State's 55 counties has a magistrate court; the number of magistrates per county varies from two to ten depending upon the population of the county. There are currently 157 magistrates throughout the State.

The Supreme Court provides an orientation for new magistrates and annual or bi-annual continuing education classes thereafter. Additionally, the Court provides magistrates with summaries of new laws and forms that assist them in performing their duties.

Magistrate courts have original jurisdiction in criminal matters, but do not have authority to try or otherwise dispose of cases where the defendant can be convicted or sentenced as a felon. Additionally, some circuit court judges enter an administrative order that permits magistrates to hear emergency and/or predispositional matters involving juveniles and mental hygiene hearings. In 1997, the State's magistrates heard 4,239 mental hygiene and 2,658 juvenile

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proceedings.

Magistrate courts have original jurisdiction in civil matters where the amount in controversy does not exceed $5,000. Magistrates also conduct temporary and final hearings for domestic violence protective orders and hear petitions involving civil contempt of those orders.

In 1997, 363,919 cases were filed in the State's magistrate courts. Of those, 318,815 were criminal cases. Civil case filings totaled 45,068.

Magistrate courts have regular business hours not unlike those of the county courthouses. In counties having more than four magistrates, magistrates may be found in their offices during evening, weekend and holiday hours as designated by the chief circuit judge. In every county, one magistrate is on-call at all times other than regular office hours. Magistrates need not stay at the magistrate court when they are on call. However, they must appear at the courthouse, or at any other appropriate location, for matters regarding emergency search warrants, for petitions for domestic violence protective orders, and for the purpose of holding emergency custody proceedings in child abuse and neglect cases. For the magistrates' other on-call duties, initial appearances and bond matters, a magistrate is only required to call in at certain times.

To ensure the appropriateness of magistrate jurisdiction, especially in domestic violence proceedings, the Commission makes the following recommendations:

19.1 *Magistrate Jurisdiction*: The **Legislature** should amend the domestic violence statute so that magistrates hear petitions for <u>temporary</u> domestic violence protective orders only. Temporary orders should be returnable to, and final protective orders should be issued by, a judge, whether it be a family court judge, circuit court judge, or family law master. Judicial officers hearing <u>final</u> protective order cases must be able to schedule and hear the case within the statutorily required period of time (currently five days from the date the temporary protective order was issued).

The **Legislature** should modify the mental hygiene statute so that magistrates are precluded from hearing mental hygiene cases. A mental hygiene commissioner has the training and experience to deal with juvenile and adult mental health issues; the magistrate should only have jurisdiction in cases of emergency when a mental hygiene commissioner is unavailable; mental hygiene orders issued by a magistrate should be returnable to the mental hygiene commissioner within a specified period of time.

19.2 *Qualifications:* The **Supreme Court** should provide more continuing legal education for magistrates.

19.3 *Twenty-Four Hour On-Call*: Every defendant should have the opportunity to make bail before having to go to jail. Therefore, the **Legislature** should require magistrates to be available 24 hours a day. One way to meet this goal is to use the new "ATM" technology which would allow magistrates to hold proceedings by video conference. That way, a magistrate in one county could

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hear proceedings occurring during nighttime hours, weekends and holidays in several counties.

Commentary: At the Commission's public forums, witnesses testified that criminal defendants often spend time in jail awaiting a magistrate to call in, whereas if a magistrate were at the courthouse 24 hours-a-day, the defendant could make bond immediately and avoid jail time.

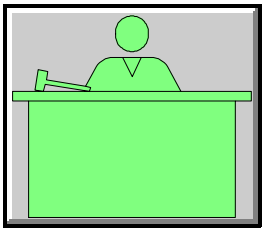
19.4 *Setting Bail:* The **Legislature** should set a uniform bail schedule; a defendant's bail should be determined by the charge.

Under a uniform schedule, the magistrate would not have to appear. The Legislature would need to determine who, other than a magistrate, could collect bail money. However, magistrates should appear to set bail outside of the uniform schedule at the request of law enforcement or when the defendant is charged with a violent offense.

19.5 *Uniformity:* The **Supreme Court** should require that all magistrate rules be applied uniformly in every county. Uniformity will prevent forum shopping.

Comments on the Commission's Deliberations: After debating the issues surrounding the creation of a uniform bail schedule, the Commission voted to add the statement that magistrates should appear to set bail where the defendant was charged with a "violent offense."

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INDEPENDENCE AND ACCOUNTABILITY

The greatest scourge an angry Heaven ever inflicted upon an ungrateful and a sinning people, was an ignorant, a corrupt, or a dependent Judiciary.

--JOHN MARSHALL

ISSUE 20: APPROPRIATENESS OF THE JUDICIAL ELECTION PROCESS/CONSIDERATION OF MERIT SELECTION

MAJORITY OPINION

Nationwide, judicial selection for appellate and general jurisdiction courts is accomplished under four generally recognized methods. Eight states, including West Virginia, utilize partisan elections for the selection of all of their appellate and trial judges. Thirteen other states also select their judges by popular election, but on nonpartisan ballots. In sixteen states, judges are chosen by means of a merit selection process involving a nonpartisan nominating commission, typically made up of lawyers and members of the public who investigate and evaluate applicants for the bench. This nominating commission then submits the names of the most highly qualified applicants to the governor of the state for final selection. Five other states utilize gubernatorial or legislative appointment to the bench without a nominating commission. Finally, nine states employ a combination of merit selection and other methods (usually popular election) for selection of judges at various appellate and trial court levels.

Currently, in West Virginia all Supreme Court justices, circuit judges and magistrates are selected in partisan elections. Supreme Court justices are elected for 12-year terms; circuit judges for 8-year terms; and magistrates for 4-year terms. Family law masters are appointed by the Governor for 4-year terms.

Obtaining qualified, competent, fair and impartial judges is, of course, the central concern under any judicial selection method. The ongoing debate in this State, as well as in other states, focuses upon which selection method best serves this end. The partisan election system now used in West Virginia preserves the electorate's choice of local judges and the Supreme Court justices who serve on a statewide basis. Concerns raised about this method of judicial selection include impartiality problems (real or perceived) arising from the political process when judicial candidates must campaign for a position for which they are ultimately expected to remain impartial. Much of this concern arises from the practice of financing these campaigns through contributions that often come from

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lawyers and litigants.

Nonpartisan election of judges presents similar problems, but is considered to remove some of the political aspects from a campaign. Nonpartisan elections for judges are also sometimes criticized because party affiliation is removed from the limited information available to voters regarding judicial candidates. Specifically, because judicial candidates are ethically prohibited from stating their positions on (or "prejudging") particular issues, nonpartisan status further limits the information voters have about a candidate. Proponents of nonpartisan elections believe, however, that party affiliation should be considered irrelevant when selecting judges who are expected to act fairly and impartially.

Merit selection methods eliminate the campaign and related financing issues presented by the elective process. Merit selection is viewed as a screening process where the commission or other body making the initial selections has available a substantial amount of information about each applicant not generally available to the public in a judicial election. This selection method also draws from a larger pool of candidates since many well-qualified applicants are reluctant to engage in the popular election process. Merit selection, however, deprives voters of their right to choose their own judges directly, and still remains a "political" process in the nominating commission as well as in the final appointment decision by the governor or legislature. Retention elections are often used in merit selection states after an appointed judge's initial term, where the voters get to choose whether to retain or reject the appointed judge. Critics of the merit selection/retention election process point out that a sitting judge, whether it be an incumbent by popular election or by merit selection, holds a substantial advantage, and is not likely to be removed from the bench absent some significant controversy regarding the judge's performance.

A political process is invariably involved in whatever method is chosen for the selection of circuit court judges, whether it be by nominating commission and subsequent appointment or by popular election at the polls. Although each system of judicial selection has its own positive and negative attributes, the current method of selecting judges by the vote of the electorate should remain as the principal method in this State unless and until another selection method is proven superior.

A system of merit selection is currently used on a voluntary basis under Executive Order of the Governor for the selection of judges to fill midterm vacancies. That process utilizes a nominating commission and subsequent appointment by the Governor. This method appears workable and beneficial, and should continue in all vacancies occurring at the Supreme Court level as well as the Circuit Court level.

To ensure the appropriateness of the judicial election process:

20.1 The **State of West Virginia** should continue to use the popular partisan election system for the selection of Supreme Court justices, circuit court judges and magistrates.

20.2 If a Unified Family Court judge system is created by the **Legislature**, its judges should be selected in the same manner as Supreme Court justices,

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circuit court judges and magistrates, that is, by partisan election.

20.3 The **Legislature** should pursue a course of action that would enable it to codify the system of selection and appointment of justices and judges currently utilized on a discretionary basis under Executive Order of the Governor to fill vacancies on the Supreme Court and in Circuit Courts for all midterm vacancies.

Comments on the Commissions Deliberations: The Commission spent considerable time reviewing and deliberating the Independence and Accountability subcommittee's proposed recommendations. Those recommendations included both a majority and a minority report. The subcommittee's majority report was approved with two exceptions. First, the majority report recommended that judicial candidates (justices, judges and magistrates) be elected on a nonpartisan basis. At the Commission's October 13, 1998 meeting, a large majority of those voting amended that recommendation, 20.1, to read as it does now. Second, the subcommittee's majority report recommended that Unified Family Court judges be selected by a merit selection/retention election system. A large majority of those voting amended the recommendation, 20.3, to read as it now.

The Independence and Accountability subcommittee's minority report included only one recommendation:

20.1m The **Legislature**, by proposed constitutional amendment for voter approval, should establish a merit selection and retention election method for selection of all appellate and trial court judges in this State. The constitutional amendment should provide for one judicial nominating commission for the Supreme Court of Appeals (and any other intermediate appellate court later created); and one nominating commission for each judicial circuit. Appointment by the Governor to an initial term would be made from those qualified applicants selected by the nominating commission. The appointed judge would then be subject to retention election by majority vote for each subsequent term. If the voters chose not to retain a particular judge, the nomination and appointment process would begin over again.

A motion to amend recommendation 20.1 with recommendation 20.1m was made at the Commission's October 13, 1998 meeting. That motion was defeated by a majority of those voting.

The Independence and Accountability subcommittee's minority report has been filed herein as a dissent to the Commission's recommendations.

ISSUE 20: APPROPRIATENESS OF THE JUDICIAL ELECTION PROCESS/ CONSIDERATION OF MERIT SELECTION

MINORITY OPINION

A minority of the Commission file this dissenting opinion.

Our judicial system is based on the principle that an independent, fair and

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competent judiciary will interpret and apply the laws that govern us. In this country, the public debate regarding various judicial selection methods is driven by two divergent values--judicial independence and judicial accountability. While not diametric opposites, each of these values emphasizes different facets of the judicial role. Judicial independence emphasizes the need for effective isolation and separation of our judges from political influences; while judicial accountability focuses on the connection between those who govern and the democratically governed. The method chosen for selecting our judges, therefore, should be the one that best serves the central values of maintaining the independence of the judiciary, under the leadership of judges who are qualified, competent and impartial decision-makers; yet also recognizes that some form of accountability to the people will prevent abuse of judicial powers.

The isolation required by judicial independence is necessary to preserve the unbiased nature of judicial decisions. Such decisions must be based upon the legal merits of each controversy, not personal favor, whim or other prejudicial influences. Judicial accountability, on the other hand, emphasizes the judge's responsibility to society as a whole and its citizens. As with all public stewards, judges should be occasionally called upon to render an accounting of their stewardship. Merit selection of judges with judicial retention elections is the system of judicial selection best suited to keeping in proper balance the vital principles of judicial independence and judicial accountability.

Merit selection is a way of choosing judges that uses a nonpartisan commission of public officials, lawyers and non-lawyers to locate, investigate and evaluate applicants for judgeships. The nominating commission then submits the names of the most highly qualified applicants (usually three) to the appointing authority (usually the governor), who must make a final selection from the list. Retention elections for subsequent terms of office permit the citizenry to determine whether each appointed judge should continue in office or whether the appointment process should begin anew.

West Virginia is one of only eight states that utilize partisan elections for the selection of all of their appellate and trial judges. Thirteen other states also select their judges by popular election, but on nonpartisan ballots. These methods do not allow for rational judicial selection for several reasons. Elections are premised on the assumption that the public is well-informed about the judicial candidates. In fact, it is common knowledge that, principally due to the nature of judicial campaigns, the public is largely uninformed about judicial candidates, and in many cases must simply rely upon name recognition as the basis for voting decisions. Most incumbent judges are easily re-elected and often run unopposed. Elections also discourage many well-qualified people from seeking judicial office. Many qualified attorneys have a philosophical distaste for politics and political campaigning, and thus refrain from seeking office. Elections also compromise the independence of the judiciary. Judicial officers, unlike other elected officials, should not be governed by political issues and policies. Judges should be left to impartially interpret the laws made by the policy-makers. Finally, with regard to judicial elections, a significant problem is presented by judges who must campaign and seek campaign contributions, often from the lawyers and

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litigants who appear before them. These judicial campaigns also interfere with getting court business accomplished during re-election time.

A merit selection and retention system for choosing judges is better for the following reasons:

a. Merit selection not only sifts out unqualified applicants, it searches out the most qualified.

b. Judicial candidates are spared the potentially compromising process of party slating, raising money and campaigning.

c. Professional qualifications are emphasized and political credentials are de-emphasized.

d. Judges chosen through merit selection do not find themselves trying cases brought by attorneys who gave them campaign contributions.

e. Highly qualified applicants will be more willing to be selected and serve under merit selection because they will not have to compromise themselves to get elected.

f. A more diverse bench, inclusive of women and minorities, will be encouraged.

Although no method can completely eliminate politics, a merit selection/retention system does spare candidates from the potentially compromising process of raising money and campaigning. This system gives the public a better-informed voice through participation on nominating commissions and voting in retention elections. A substantial majority of the states in this country use a system of merit selection for choosing some or all members of the judiciary. In fact, in this State, governors over the past decade have utilized a nominating commission to select qualified appointees to fill midterm vacancies on the trial court bench. While no system of judicial selection is perfect, the merit selection and retention election method is best-suited to balancing the central principles of judicial independence and judicial accountability.

To ensure the appropriateness of the judicial election process, a minority of the Commission makes the following recommendation:

20.1m The **Legislature**, by proposed constitutional amendment for voter approval, should establish a merit selection and retention election method for selection of all appellate and trial court judges in this State. The constitutional amendment should provide for one judicial nominating commission for the Supreme Court of Appeals (and any other intermediate appellate court later created); and one nominating commission for each judicial circuit. Appointment by the Governor to an initial term would be made from those qualified applicants selected by the nominating commission. The appointed judge would then be subject to retention election by majority vote for each subsequent term. If the voters chose not to retain a particular judge, the nomination and appointment process would begin over again.

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Commentary: Judges are public officials different than the officials of the other two branches of government--executive and legislative. Judges are not makers of law or policy, but are to impartially interpret the law. Judges must interpret the law without the pressures of day-to-day politics.

There is a high correlation between the amount of money raised in a judicial campaign and election. Judges should not be put in a position of raising money, that often comes from lawyers and litigants, a practice which undermines the perceived and actual impartiality of the judiciary.

The lack of background and significant information on judicial candidates available to voters, coupled with inability of judges to speak to specific issues because of the Code of Judicial Conduct, leads to an uninformed electorate when it comes to choosing judges at the polls. By contrast, a nominating commission under a merit selection system has the ability to carefully screen and investigate the qualifications, competency and fitness of every applicant seeking appointment to the bench.

ISSUE 21: ADEQUACY OF PUBLIC EDUCATION AND COMMUNITY OUTREACH EFFORTS RELATED TO THE COURTS

Much of what the public knows about the courts is gleaned from either media accounts of actual cases or fictional stories of courtroom drama in books, on television and at the movies. A lack of understanding about how the court system works, or worse, misperceptions about how judicial matters are handled, can lead to significant public dissatisfaction with the courts.

Citizens come into contact with the courts at key points in their lives, such as when they are divorced, involved in a custody dispute, or are a party to civil litigation. Citizens also come into contact with the court system when they serve as jurors. Adequate juror orientation prior to jury duty is critically important so that jurors can fairly and knowledgeably carry out their vital role as fact-finders.

Many different governmental bodies have a role in educating the public about the judicial system.

The State Board of Education requires secondary schools to offer an elective course in government.

The Young Lawyers section of the West Virginia State Bar is in the process of revising and reissuing a basic information booklet on the magistrate court system for the general public and litigants. There is a need for development and distribution of a similar information booklet on civil and criminal matters in circuit courts.

The Supreme Court has developed an Internet website for public access to Supreme Court information. Moreover, the Court recently appointed an Information Services Director to facilitate the flow of information to the public and press, and to develop projects for public education and outreach regarding the courts. Some projects being proposed include: a public education program--Legal Advancement for West Virginia Students (LAWS)--involving local circuit courts and schools, culminating in Supreme Court argument hearings in various locales; production, in association with West Virginia Public Radio, of a week-long series on the State's court system; the update of an informational brochure on the Supreme Court; and the establishment of a regularly held media

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day to promote greater understanding among press members regarding the workings of the courts.

To ensure that there is adequate public education and community outreach efforts related to the courts, the Commission makes the following recommendations:

21.1 The efforts of the **Supreme Court** and the **State Bar** directed toward public education and community outreach should be continued. The Supreme Court's LAWS program should be coordinated with the state and local boards of education as an adjunct to the government course offered in secondary schools.

21.2 The **Legislature** and local **courts** should establish and expand parent education and mediation programs statewide.

Commentary: Court-annexed mediation programs are a valuable component of the judicial system, as an alternative means of early and effective resolution of civil disputes, particularly those in the family law area excluding cases involving family violence. There is a need for more public education regarding mediation and mediation programs.

21.3 The **Supreme Court** should design a uniform comprehensive program for juror orientation and then implement it on a statewide basis. Judges and circuit clerks should be trained to provide juror instruction under this program.

21.4 The **Supreme Court** should encourage and assist local circuit courts and magistrate courts to establish programs to bring students into the local courts, with the aid of each local bar, for educational sessions culminating in mock trial participation by the students.

21.5 The **Supreme Court** and the **State Bar**, including its **Young Lawyers Section**, should coordinate their efforts and develop informational booklets and video tapes for public distribution that explain basic court functions, procedures and operations.

ISSUE 22: RESPONSIBILITY FOR INDIGENT DEFENSE REPRESENTATION

Under the Sixth Amendment to the United States Constitution and under Article 3, Section 14 of the West Virginia Constitution, an indigent person must be provided, without cost, an attorney to represent him or her in the defense of a criminal, juvenile or other case involving significant jeopardy to liberty or due process interests of the indigent individual. In West Virginia, the responsibility for indigent representation is carried out by two methods.

First, the appointed counsel system, utilizing private attorneys, operates in all 55 counties of the State. Approximately 800 appointed counsel and service providers are reimbursed annually by the West Virginia Office of Public Defender Services (PDS) for fees and expenses incurred in the representation of indigents. The PDS office now pays in excess of 28,000 bills per year.

The second method for providing indigent representation is through the Public

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Defender Corporation system, that is overseen by the PDS. The Public Defender system operates 18 offices in 15 circuits (involving 23 counties); each office operates as a non-profit legal corporation with its own board of directors. The system provides 102 full-time lawyers and 59 support personnel devoted exclusively to indigent defense.

The total number of cases handled by private appointed counsel and public defenders continues to increase, growing approximately 16% per year. This increase stems from a variety of causes including: significant increases in drug-related cases; increased filings involving domestic violence and child abuse and neglect; and the substantial increase in the number of State Police (over 200 new officers) that has resulted in more arrests.

In each of the past eight years, the Public Defender offices handled cases at the average rate of less than $200 per case. Private appointed counsel costs have risen yearly over the same period, currently averaging $545 per case. However, attorneys fees, whether charged by a public defender or appointed counsel, average $250 or less in almost half (48%) of all cases. Because caseloads have continued to increase dramatically over the past several years, budget shortages of the funds necessary for the payment for appointed counsel are a recurrent problem.

To ensure adequate and cost-effective indigent defense representation, the Commission makes the following recommendations:

22.1 The **Legislature** should consider alternate methods of compensation for appointed private attorneys, such as flat-rate contracts or part-time employment by Public Defender offices.

22.2 The **Legislature** should establish additional Public Defender offices in the counties most likely to achieve the greatest cost savings and to avoid negative economic impact on the local private bar.

22.3 Because conflicts of interest arise in many criminal cases, so that both the Public Defender office and private counsel must be appointed, the **Public Defender Corporations** in conjunction with **Public Defender Services** should establish a "separate-office method" to keep those cases in the Public Defender office.

22.4 The **Legislature** should establish a pilot project to study the accuracy of self-reported financial information on "client eligibility affidavits" used to determine whether or not an individual is indigent. The results of that program would indicate whether a statewide audit program would result in significant savings because fewer persons would qualify for free attorney representation.

22.5 The **Legislature** should review whether the current list of offenses where indigents must be provided counsel without cost involve some proceedings where appointed counsel is not constitutionally required. If such proceedings are identified, consideration should be given to eliminating them from the statutory list of cases where appointed counsel is

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required. Child abuse and neglect and mental hygiene proceedings should not be considered in the Legislature's review.

22.6 Under its rule-making authority, the **Supreme Court** should require that circuit and magistrate courts schedule hearings and other court appearances in criminal matters so as to reduce "waiting in court" time that increases costs in appointed counsel cases.

22.7 The **Legislature** should adjust penalties with regard to a number of minor offenses so as to avoid possible jail time and, therefore, the right to counsel.

22.8 The **Supreme Court** should require that all judges assess costs against all defendants whether or not the defendants are represented by a Public Defender.

Comments on the Commission's Deliberations: In view of the heightened vulnerability and needs of participants in child abuse and neglect and mental health proceedings, the Commission added the last sentence to recommendation 22.5 which removes child abuse and neglect and mental hygiene proceedings from the list of cases the Legislature should consider in its review.

Upon further review of these recommendations, the Commission added recommendation 22.8.

ISSUE 23: ENFORCEMENT OF THE ETHICS CODE

Public confidence in the courts, and the actual effectiveness of the judicial system, is largely dependent upon the ethical conduct and leadership of its judges. The West Virginia Supreme Court of Appeals is required by Article 8, Section 8 of the West Virginia Constitution to use its inherent rule-making power to "from time-to-time, prescribe, adopt, promulgate, and amend rules prescribing a judicial code of ethics, and a code of regulations and standards of conduct and performances for justices, judges and magistrates, along with sanctions and penalties for any violation thereof." Under this constitutional authority the Supreme Court "is authorized to censure or temporarily suspend any justice, judge or magistrate having the judicial power of the State, including one of its own members, for any violation of any such code of ethics, code of regulations and standards, or to retire any such justice, judge or magistrate who is eligible for retirement."

Under the current constitutional provision the Supreme Court has no absolute removal authority (except in cases of disability retirement) in disciplinary cases involving judges, but the court does have the authority to suspend a judge for up to one year. Ultimate removal authority should be left to existing methods, including impeachment and the ability of voters not to re-elect a particular judge.

The Supreme Court has established the Judicial Investigation Commission (Commission) for the investigation and handling of complaints against judicial officers including justices, judges, family law masters, mental hygiene commissioners and magistrates. The Commission determines whether probable cause exists to formally charge a member of the judiciary with a

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violation of the CODE OF JUDICIAL CONDUCT. If probable cause is found, the Commission either issues a written admonishment to the judge, or in more serious circumstances, the matter is referred for further proceedings before the Judicial Hearing Board. Following proceedings before the Judicial Hearing Board, a recommendation is submitted to the Supreme Court for its final determination of the appropriate sanction, if any.

One of the most problematic complaints heard by the Judicial Investigation Commission arises from actions taken by judicial candidates in conducting election campaigns. These complaints are often not resolved under the Commission's normal procedure until after an election has been won or lost. Consequently, a need exists for the creation of a system to promptly resolve those complaints prior to election day. The establishment of an election committee to deal with charges of judicial election violations in an expedited process would better address campaign conduct complaints.

A second problematic issue involves campaign financing practices in judicial elections, where substantial amounts of money are raised from lawyers and litigants. Campaign fund-raising is a matter of public concern because the practice negatively affects the perception of fairness in the judicial system. However, the current rules of ethics and procedure whereby judges are prohibited from knowing who contributes to a judicial campaign are sufficient safeguards as long as they are strictly enforced. The suggestion of a blind trust procedure for election financing would create more problems than solutions.

Utilization of the highest appellate court as the final arbiter of judicial ethics complaints is common to virtually every state, and appears to be the most workable solution in view of separation-of-powers issues as well as other practical problems of establishing a panel of persons outside of the judiciary to make findings and conclusions on judicial ethics issues. Therefore, the current procedures for the handling of complaints against judicial officers including justices, judges, family law masters, mental hygiene commissioners and magistrates through the Judicial Investigation Commission, the Judicial Hearing Board and the Supreme Court of Appeals is a workable and effective system in most respects. However, the final sanctions imposed upon judicial officers by the Supreme Court in cases of judicial ethics violations are often too light, and leave the public with the impression that judges are above the law.

To ensure the enforcement of the ethics code, the Futures Commission makes the following recommendation:

23.1 The **Supreme Court** should promulgate rules and procedures for the establishment of an election committee to deal promptly with charges of election violations made against judicial candidates, so that such charges are dealt with in an expeditious fashion prior to elections where possible.

ISSUE 24: ACCOUNTABILITY OF JUDICIAL OFFICERS AND OTHER COURT PERSONNEL

In the process of resolving criminal charges and civil controversies in the judicial system, there will always be perceived "winners" and "losers" in every case. The adversarial process leaves many litigants

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dissatisfied with the final judgment. A properly functioning court system cannot provide every litigant with his or her desired final outcome, however, it can be expected to provide a fair and regular process leading to the final outcome.

It is well-documented that when litigants are afforded an opportunity to have their cases heard in the regular course of established procedures with prompt hearings and trials, views of fairness and satisfaction in the judicial process are shared by both the winners and losers. A vital part of this fair and regular process is the justified expectation that judges will render decisions in a timely manner.

One of the greatest public concerns over the operation of the State's judicial system is delay in the judicial decision-making process. Under both the CODE OF JUDICIAL CONDUCT and the RULES ON TIME STANDARDS, the judicial officers in this State are required to conduct case proceedings in a reasonably prompt manner and render decisions in a timely fashion.

Litigants who believe that their cases are not being timely adjudicated have two options: (1) file an ethics complaint against the judicial officer; or (2) petition a higher court for an order to compel the offending judicial officer to proceed with the case. This order is known as a "writ of mandamus." However, the judicial ethics procedures and sanctions, while generally effective under most circumstances, are not well-suited to provide relief when a judicial officer fails to make a timely decision. Moreover, it is unfair to require attorneys or parties in a particular case to either file an ethics charge or a petition for a writ of mandamus when a judicial officer fails to make a timely decision.

To ensure the accountability of judicial officers, the Commission makes the following recommendations:

24.1 In order to provide a better system for enforcement of case processing time standards, the **Supreme Court** should require "exception reporting" of all out-of-compliance cases to the Administrative Office of Courts on a regular basis under a formalized process.

24.2 The **Supreme Court** should specifically define time standard violations and promulgate a system of immediate and automatic sanctions to be imposed when judicial officers are out-of-compliance.

ISSUE 25: FITNESS OF PHYSICAL FACILITIES

Many of West Virginia's counties suffer from a lack of adequate court facilities. These inadequacies include insufficient space, poor design for functional efficiency and security; inaccessibility for individuals with disabilities; decentralized locations; and insufficient parking spaces.

Adequate facilities for the fair and prompt administration of justice are a concern not only of judges, lawyers and court personnel, but also of central importance to the citizens of this State whose lives and property are only as secure as the courts which adjudicate and protect their rights. The concepts of efficient judicial operations and public confidence are closely related to the question of facilities. Poorly designed,

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cramped or otherwise inadequate courtrooms can markedly reduce the efficiency of court functions, and thereby diminish public confidence in the judiciary. Failure to adequately provide appropriate and well-designed space for supporting judicial personnel can seriously impair the competency of the courts to resolve issues properly.

The cost of designing, building or otherwise providing, and maintaining a proper courthouse is the principal responsibility of each county, through its county commission; but that responsibility should also be shared by the Judiciary and the Legislature for the benefit of all citizens in this State.

To date, neither the Supreme Court nor the Legislature has adopted standards for court facilities. However, in 1994, the Supreme Court did promulgate STANDARDS FOR FAMILY LAW MASTER FACILITIES to provide beneficial guidance to local courts and county commissions in establishing appropriate family law master facilities.

Uniform minimum standards for all court facilities in the State need to be developed and adopted. While justice is not guaranteed by adequate courthouse facilities, the absence of adequate facilities undermines the effectiveness of the entire judicial system.

To ensure the fitness of court facilities, the Commission makes the following recommendations:

25.1 The **Legislature** should establish a court facilities commission made up of persons with the expertise and background to establish minimum physical facility standards.

25.2 Once minimum standards are established, each **county commission** should be required to file a proposed compliance plan under the standards. Provision should be made for waivers or exemptions from this requirement when a county's facilities already satisfy the minimum standards.

25.3 The **Legislature** should establish funding sources to provide supplemental funding for county commissions to achieve compliance with the minimum standards.

ISSUE 26: SUFFICIENCY OF TRAINING OPPORTUNITIES FOR JUDICIAL OFFICERS AND OTHER COURT PERSONNEL

Adequate training for all judicial officers and other court personnel is critical for the proper functioning of any judicial system. Without initial training and continuing education regarding developing areas of the law, judicial officers and staff are left without the fundamental guidance necessary for the proper performance of their duties. The Supreme Court of Appeals, the Administrative Office of Courts and the West Virginia Judicial Association have exhibited substantial dedication to the task of judicial training and continuing education for court officers and support personnel. Training programs for judicial personnel are conducted separately for each discipline or position, such as family law master training, probation officer training, magistrate assistant training, judicial secretary training, etc.

Current educational/training requirements and opportunities for existing Supreme Court justices and circuit judges are

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adequately provided through the cooperative efforts of the Supreme Court Administrative Office and the West Virginia Judicial Association in accordance with the court rules requiring continuing judicial education. Justices and judges attend two 3-to-4-day-long education seminars annually. Newly elected or appointed judges attend the Supreme Court's "New Judge Orientation Program" and, additionally, are offered the opportunity to take specialized training courses at either the National Judicial College or the American Academy of Judicial Education; judicial officers are not required to take this training.

Magistrates are currently provided one, 2-3 day training seminar annually; additional training is needed to provide timely training on new and amended legislation.

Under a new program established by the Supreme Court, in the next few years all circuit judges will be provided law clerks; the first ten of those law clerks began work during August 1998. A system of formalized training for these law clerks has been put into place by the Supreme Court's Office of Counsel.

All court officers and staff would benefit from interdisciplinary regional meetings or training sessions that would include all judicial officers and staff from each county or circuit. Moreover, it is vital that the Court train judicial officers and court personnel about issues relating to all forms of family violence including child abuse and neglect and elder abuse.

To ensure the sufficiency of training opportunities for judicial officers and other court personnel, the Commission makes the following recommendations:

26.1 The **Supreme Court** through its Administrative Office of Courts should provide a second training session for Magistrates each year, to be held shortly after the conclusion of the legislative session, to provide updates on changes in the law.

26.2 Under its rule-making authority, the **Supreme Court** should require newly elected and appointed judges to take specialized training courses.

26.3 The **Supreme Court** should consider providing more training sessions for judicial secretaries and other support personnel.

26.4 The **Supreme Court's** training program for all existing and new circuit court law clerks should be expanded to include at least once-annual training sessions. This training could, in part, satisfy the State Bar's continuing legal education requirements applicable to all licensed attorneys in this state.

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ADMINISTRATIVE ORDER

SUPREME COURT OF APPEALS OF WEST VIRGINIA

WHEREAS, the West Virginia Supreme Court of Appeals is committed to a court system which is fair, accessible, efficient, and accountable; and

WHEREAS, it is the responsibility of the Court as a public institution to ensure that it effectively meets the needs of the citizens which it serves; and

WHEREAS, the structure and procedures of the West Virginia Judicial System have not been subject to a thorough, critical examination since the "Judicial Reorganization Amendment" of 1974; and

WHEREAS, transformations in the social and cultural landscape in the ensuing twenty years have dramatically changed the nature of the problems which the court system is being asked to resolve;

NOW, THEREFORE, IT IS ORDERED that the Chief Justice appoint a Commission on the Future of the West Virginia Judicial System and direct that it:

(1) Examine the trends, both internal and external to the court system, which are affecting the role of the court as an institution and the delivery of its services;

(2) Assess the performance of the court system in light of established standards of fairness, accessibility, timeliness, and accountability;

(3) Identify the strengths upon which to build as well as the obstacles to overcome to enable the court system to improve its performance;

(4) Make recommendations as to structural, organizational, and procedural changes that will ensure a just, effective, responsive, and efficient court system into the next century; and

(5) Develop a general plan to implement the recommendations; and

IT IS FURTHER ORDERED that in this endeavor the Commission consider the experiences and perspectives not only of the judicial officers and others who work within the system, but also those individuals, organizations, and agencies that are served by the court system; and

IT IS FURTHER ORDERED that the Commission submit its deliberations and recommendations to the Supreme Court of Appeals in the form of a final report by December 1, 1998.

ENTER: OCTOBER 2, 1997

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APPENDIX B

WEST VIRGINIA'S COURT SYSTEM: YESTERDAY AND TODAY

THE 1863 CONSTITUTION

The West Virginia Supreme Court of Appeals and the State's first courts of limited jurisdiction were established by the 1863 Constitution. Initially, the Supreme Court was manned by only four justices. The first courts of limited jurisdiction were based on a township system; each township elected a local justice to handle civil claims and criminal misdemeanors. Ten years later, during the 1872 Constitutional Convention, the township courts were abandoned in favor of county courts. A justice of the peace system, similar to the one used in Virginia since 1661, was also established at the same time to handle small claims. The justices of the peace were paid from fees collected in their courts.

The 1880 judicial amendment to the West Virginia Constitution removed most of the county courts' judicial function but left the justice of the peace system intact.

THE 1974 JUDICIAL REORGANIZATION AMENDMENT

The court system established by the 1880 judicial amendment remained substantially unchanged for over a century. In fact, the only change of note was the 1904 addition of a fifth justice to the bench of the Supreme Court of Appeals. Consequently, by the 1960s, a hodgepodge collection of statutorily mandated courts existed alongside the justice of the peace courts, neither of which were supervised nor assisted by the Supreme Court of Appeals. Moreover, jurisdiction and appellate process was overlapping and confusing.

In 1967, a citizens committee frustrated by the inefficiency of that antiquated system met in Charleston with the goal of formulating a modern judicial model for the State's courts. Prominent citizens from around the State were invited to participate in this landmark work. The resulting constitutional amendment, known as the Judicial Reorganization Amendment, was ratified by general election on November 5, 1974.

Among other things, the Judicial Reorganization Amendment

- unified the State's lower courts under the administrative supervision of the Supreme Court of Appeals;
- collapsed intermediate statutory courts of record into the circuit courts;
- abolished the Justice of the Peace Courts;
- mandated creation of a magistrate court system; and
- converted county courts into county commissions.

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In effect, the Judicial Reorganization amendment secured a more businesslike management of the courts and promoted simplified and more economical judicial procedures.

CURRENT STRUCTURE

Since 1974, West Virginia has operated a uniform, statewide court system consisting of the Supreme Court of Appeals and the trial courts: circuit court; magistrate court; and municipal court.

The Supreme Court of Appeals

The Supreme Court of Appeals of West Virginia, comprised of five justices elected to twelve year terms, is the court of last resort. In addition to its extraordinary writ powers, it has appellate jurisdiction over all matters decided in the circuit courts, including criminal convictions affirmed on appeal from magistrate court.

The Circuit Courts

The circuit courts are courts of general jurisdiction. They have jurisdiction over all civil cases at law exceeding $300; all civil cases in equity; proceedings in habeas corpus, mandamus, quo warranto, prohibition and certiorari; and all felonies and misdemeanors. The State is divided into 31 circuits; each circuit is comprised of from one to four counties. There are currently 62 circuit court judges. The circuits are to be evaluated for redistricting in 1999.

The circuit courts also receive recommended orders from special masters appointed to review family law, mental hygiene and juvenile matters.

West Virginia has 14 full-time and 13 part-time family law masters in 17 regions. The Family Law Master regions are to be evaluated for redistricting in 1998. Family law masters hear cases involving divorce, child custody and support.

There is one Mental Hygiene Commissioner in each of the State's 55 counties. These Commissioners make recommendations regarding conservatorships and guardianships, a function formerly served by County Commissions.

West Virginia has two full time juvenile referees located in Charleston and Huntington. Juvenile referees hold detention hearings when a child is arrested or taken into custody.

The Magistrate Courts

Magistrate Courts, known as courts of limited jurisdiction, hear all misdemeanors and conduct preliminary examination in felony cases. Their civil jurisdiction extends to matters involving $5,000 or less. There is a magistrate court in each of the State's 55 counties. The number of

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magistrates per county varies from two to ten. West Virginia currently employs 157 magistrates; the magistrate's term of office is four years.

The Municipal Courts

The jurisdiction of municipal courts is constitutionally limited to those cases involving ordinance violations. Municipal courts are administered locally. There are 122 municipal judges statewide.

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Appendix C

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Juror Service Exit Questionnaire - Report C-9

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RECAP OF THE COMMISSION'S NINE PUBLIC HEARINGS

The MARTINSBURG FORUM was held on Tuesday, November 4, 1997. Laura Rose, President of the West Virginia Trial Lawyers Association, served as moderator. Twenty of the sixty-six persons in attendance addressed the Commission. Included among the speakers were: James Tolbert, President of the West Virginia Chapter of the NAACP; Richard L. Douglas, Chairman of the Child Support Enforcement Division of DHHR; Vicki Douglas, Legislative Representative from the 52nd District; and Mike Thompson, Prosecuting Attorney from Jefferson County. Twelve of the speakers addressed family law or the need for a family court. Six persons addressed the judicial election process. Other comments focused on juvenile justice, access, plea bargaining, advanced technology, establishment of an intermediate court of appeals, bias in the courts, alternative dispute resolution, order enforcement, and frivolous lawsuits.

Held on Wednesday, November 5, 1997, the MORGANTOWN FORUM was moderated by Jack Rogers, Executive Director of the Public Defender Corporation. The Morgantown forum was unique in that many of the 48 attendees were either members of the bar or court employees. Four of the ten speakers discussed the judicial election process. Two persons discussed the need to enforce time standards. Other topics of discussion included the need for a family court or more family law masters, bail bondsman, private process servers, and circuit court rules. Among the speakers were: Professor Forest J. Bowman, President of the West Virginia Bar Association; Attorneys Chilton Wise and Wesley Metheny; Process Server, Allen Spiker; and Bail Bondsman, David Shane.

The ELKINS FORUM, moderated by Karen Lukens, Past-President of the League of Women Voters, was held on Thursday, November 6, 1997. With 45 persons in attendance, the Elkins forum had a markedly different flavor than that of the previous two forums. Only one of the eleven speakers, Karla Schartiger of Elkins Women's Aid in Crisis, represented a public group. Moreover, despite the specifically stated caveat that the Commission could not assist with individual cases, the majority of the speakers discussed a specific case. Most of these cases involved a non-custodial father and the family law master system. A few other issues were addressed, including widow/widowers' rights, the judicial election process, domestic violence, and the need for an intermediate court of appeals.

The BECKLEY FORUM was held on Wednesday, November 12, 1997. The moderator was the Honorable William Wooton, Judicial Chair of the West Virginia Senate. Six of the 29 persons in attendance addressed the Commission. All six speakers addressed family law or domestic violence matters. Four of the six speakers related issues arising out of their own cases, which included judicial compliance with time standards, gender bias, judicial accountability, and a pro se litigant's experience in navigating the system. The two remaining speakers, Gloria Martin, Advocate at the Family Refuge Center in Lewisburg, and Wilma Cook of Beckley's Women's Resource Center, addressed domestic violence issues, which included courthouse security, judicial training, and accessability.

The CHARLESTON FORUM, held on Thursday, November 13, 1997, tied with

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Martinsburg for the greatest number of speakers and tied with Parkersburg for the largest attendance. Otis Cox, Secretary of the Department of Military Affairs and Public Safety, served as moderator. Twenty of the eighty attendees addressed comments to the Commission. Speakers included: Barbara Baxter, Bar Commission on Children and the Law; Sue Julian, Co-Chair of the Coalition Against Domestic Violence; Ellender Stanchina, President of the League of Women Voters; C. Page Hamrick, family law master, and several persons representing various fathers' rights groups. Seven speakers discussed the family law master system, and four persons discussed victim/ victim's family's rights in criminal cases. At least two speakers addressed each of the following issues: procedure in abuse and neglect cases, domestic violence, the judicial election process, and recusal procedure.

Held on Tuesday, November 18, 1997, the LOGAN FORUM had the lightest attendance of the eight forums, with 21 attendees. Moderator, D. C. Offutt, Jr., President of the West Virginia State Bar, accepted comments from six speakers. All but one speaker focused his or her comments on the FAMILY LAW MASTER system. Specifically addressed were: the procedure surrounding temporary protective orders; judicial accountability; and enforcement of visitation orders. Two of the six speakers had previously presented their comments regarding gender bias and fathers' rights at the Charleston forum.

The WHEELING FORUM, held on Wednesday, November 19, 1997, was the shortest of the eight forums. Moderator, Tom Tinder, Executive Director of the West Virginia State Bar, received comments from four of the 23 persons in attendance. Two speakers addressed the judicial election process, one speaker proposed jury nullification, and another discussed tort reform.

The PARKERSBURG FORUM, held on Thursday, November 20, 1997, was the last of the eight forums. Although matching the Charleston figure for largest in attendance, the Parkersburg forum was unique in that none of its speakers represented public groups. Moderator, Bruce Perrone, Executive Director of the Legal Aid Society of Charleston, took comments from 16 of the 80 people in attendance. Seven of the sixteen speakers discussed fathers' rights in relation to family law masters. Four of those speakers had already spoken at another forum. In addition to the family law master system, the other most frequently addressed issues were child abuse and neglect proceedings, the proposed amendments to West Virginia's Rules of Civil Procedure, and the possible creation of an intermediate court of appeals.

The HUNTINGTON FORUM was held on Thursday, January 15, 1998. Of the 12 people in attendance, only one speaker addressed comments to the Commission. That speaker, Jack Vital, appearing on behalf of the Judicial Improvement Commission of the State Bar, made 17 specific recommendations regarding the jury system.

COMMISSION ON THE FUTURE OF THE WEST VIRGINIA JUDICIAL SYSTEM

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COURT PERSONNEL SURVEY

As part of its ongoing effort to identify the most significant and crucial issues facing our court system, the Commission on the Future of the West Virginia Judicial System is asking all court personnel to complete the survey included below. Your experience and perspective makes you uniquely qualified to assist the Commission in its work. You need not identify yourself by name, but please indicate your position title (probation officer, magistrate assistant, etc.) In the space provided. Please return the survey form to the Administrative Office **by February 15, 1998.**

Position Title:

Please list and b~~riefly describe the three most importa~~nt issues you believe the judicial system must address to ensure that it effectively and efficiently provides its services to the public into the next century. These issues may be structural or procedural--nothing is "off-limits." In formulating your responses, you may want to consider questions of access to the courts, the timeliness of proceedings and decision-making, fairness, independence of the judiciary, and accountability of the system ans system participants.

(1)

(2)

(3)

Please list and briefly describe any changes or solutions might suggest to address the issues you have identified.

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COMMISSION ON THE FUTURE OF THE WEST VIRGINIA JUDICIAL SYSTEM

STATE BAR SURVEY

The following is a list of the issues most frequently addressed at the nine public hearings and discussed in written submissions to the Commission. Please indicate which of these issues you believe are the most important for the Commission to consider by selecting the **top five** and ranking them by placing a 1 (most important) through 5 (least important of the five) in the space provided to the left of the issue statement.

_____ Physical, economic and procedural barriers to access to the courts and special problems facing unrepresented litigants.

_____ Coordination of court services in cases involving families and children and the availability of social and other support services in these cases.

_____ Training of court personnel and uniformity of procedures in the area of domestic violence.

_____ The need for, and role of, an intermediate court of appeals.

_____ The current system of judicial elections, including the use of partisan ballots and fund-raising.

_____ Merit selection/appointment of judges.

_____ Broader, more representative jury panels and better-informed jurors.

_____ The use of alternative dispute resolution mechanisms in the courts, especially the role of mediation in domestic relations cases.

_____ Greater accountability for all judicial officers.

_____ Recognition of the rights of victims in criminal prosecutions, especially the plea bargaining phase, and in juvenile proceedings.

_____ The level of security for the public and court personnel at all levels and locations of the court.

_____ Tort reform.

_____ Juvenile case processing, especially treatment and placement options.

_____ The use of technology in the courts.

_____ Uniform statewide policies, rules and procedures in the courts.

_____ Delay in case processing.

_____ Biased and disparate treatment in the courts.

Please list and briefly describe any other issues you believe the judicial system must address to ensure that it effectively and efficiently provides its services to the public into the next century. These issues may be structural or procedural -- nothing is "off-limits." In formulating your responses, you may want to consider questions of access to the courts, the timeliness of proceedings and decision-making, independence

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of the judiciary, and accountability of the system and system participants.

(1) _____

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(2) _____

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(3) _____

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Please list and briefly describe any changes or solutions you might suggest to address the issues you have identified.

_____

_____

_____

_____

PLEASE RETURN TO THE ADMINISTRATIVE OFFICE IN THE ENVELOPE PROVIDED BY

FEBRUARY 23, 1998
THANK YOU FOR YOUR ASSISTANCE

STATE BAR SURVEY
N = 409

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Issue	Percent of Respondents Ranking in Top 5	Percent of Respondents Ranking as No. 1	Average Rank*	Modal Rank*
Merit Selection of Judicial Officers	49% (202)	15% (61)	2.5	1
Intermediate Appellate Court	49% (202)	14% (59)	2.6	1
Uniform Rules and Procedures	46% (187)	9% (37)	3.0	4
Judicial Elections	43% (178)	11% (44)	2.6	2
Accountability of Judicial Officers	40% (163)	6% (23)	3.1	3
Alternative Dispute Resolution	37% (154)	7% (30)	3.1	4
Bias and Disparate Treatment	32% (131)	6% (23)	3.2	5
Coordination of Family Law Cases	31% (125)	8% (32)	2.8	1
Delay in Case Processing	23% (93)	6% (25)	2.9	1
Jury Representation	22% (91)	3% (12)	3.2	3
Juvenile Case Processing and Treatment	20% (84)	3% (13)	3.1	4
Tort Reform	20% (83)	4% (17)	3.1	5
Use of Technology in the Courts	20% (82)	2% (6)	3.7	5
Barriers to Access to the Courts	17% (71)	3% (12)	3.1	4
Domestic Violence	14% (59)	1% (4)	3.5	4
Security	13% (52)	2% (7)	3.5	5
Victim Rights	11% (45)	1% (4)	3.6	5

*Average and modal rank among those respondents ranking the issue in the top 5.

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INTRODUCTION

As part of the data collection effort for the Commission on the Future of the West Virginia Judicial System, the circuit courts of the State were asked to distribute exit questionnaires to all petit jurors serving in their courts for the period of December 1997 through March 1998. A copy of the questionnaire is included as Appendix A. The questionnaire was designed to gather information on juror utilization as well as selected demographic and attitudinal data.

This analysis is based on the more than 1400 questionnaires received as of April 30, 1998. The sample includes 31 of the 55 counties and represents a fair cross section of larger, more urban courts and smaller rural jurisdictions. It is important to note that the sample consists of jurors who have performed jury service; that is, they have been summoned, qualified, and reported to the court at least once. Therefore, it is not necessarily representative of the master list in its demographics, or reflective of the larger pool of potential jurors who were summoned but were either disqualified or excused from service. In addition, the sample is from a limited time period. While there is no reason to believe that jurors in service during other times of the year would be remarkably different in terms of their demographic characteristics, service patterns, or reactions to jury duty, there is always the possibility that there may be some seasonal variation in the composition and responses of the potential juror pool.

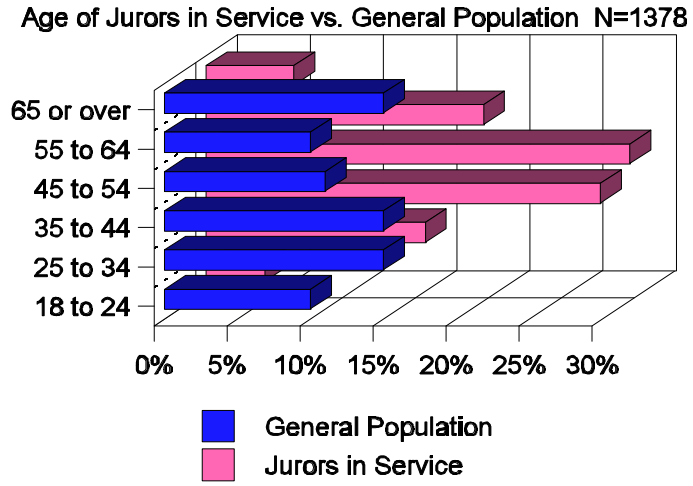
As appropriate, the descriptive analysis is examined based on the length of the jurors' term of service and whether or not the juror actually served on a trial during the period. The length of the term of service is differentiated because it is an important factor in jurors' willingness and ability to serve, it determines the burden which jury duty poses on employers and the community, and it influences the representativeness and inclusiveness of the juror pool. For purposes of the analysis, a "short" term of service was defined as any period of six weeks or less. Participation in a trial is isolated since it has been shown in national level research to have a significant impact on attitude toward service and willingness to serve again. It appears that actually serving on a trial instills a certain faith in the system and makes jurors feel that their time is well spent.

JUROR POOL PROFILE

The promise of a jury of one's peers is a hallmark of our nation's justice system. The sample of jurors completing exit questionnaires provides some insight into the composition and balance of the available juror pool in the State. It should be noted that comparisons with demographic data derived from the 1990 Census is for illustrative and benchmark purposes only and is not meant to imply any statistically significant differences or similarities. There are multiple reasons why there would not be a perfect correspondence between the makeup of the general population and the characteristics of the pool of jurors in service at any given time.

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FIGURE 1

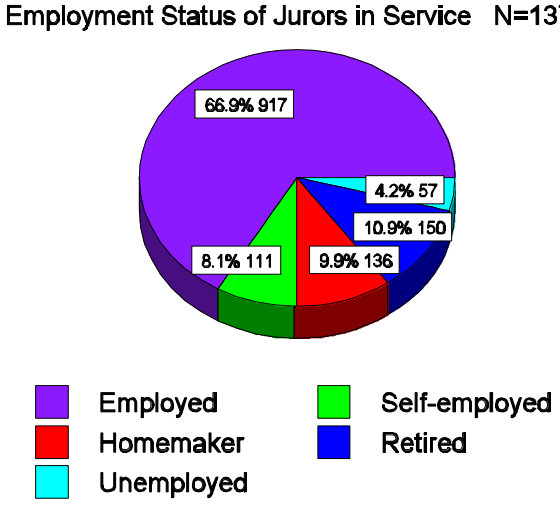


Generally, the sex division of the juror pool parallels the breakdown by sex in the population as a whole. Fifty-five percent of the potential jurors were female, and 45% were male as compared to a 52% female and 48% male division in the population as a whole. As Figure 1 shows, however, the age distribution is somewhat skewed from the general population. The juror pool tends to have less representatives from the younger and older age groups than the overall population distribution would suggest. The under representation of those 65 years of age and older is no doubt largely the result of the automatic excuse granted upon request from those in this category, as well as the qualification that individuals be physically and mentally able to perform service. The inclusion of 18-to-24 year-olds may be diminished by their absence from voter registration and driver license lists, the sources of the master list. Clearly the majority of jurors in the pool are disproportionately from the 35 to 54 age group.

The racial composition of the juror pool closely mirrors the racial mix of the population as a whole. Three percent of West Virginia's population is African American and 1% is of other ethnic or racial background. Two percent of the sample juror pool is African American and close to 1% is of other racial or ethnic origin.

As shown in Figure 2, the majority of prospective jurors (67%) are employed either full or part time. Only 8% are self employed, while 11% are retired and 10% are homemakers. Unemployed individuals and students are a negligible part of the pool. Although there is no directly comparable Census data, statewide estimates on "employment" show approximately 53% of the population in the labor force and 9% unemployed.

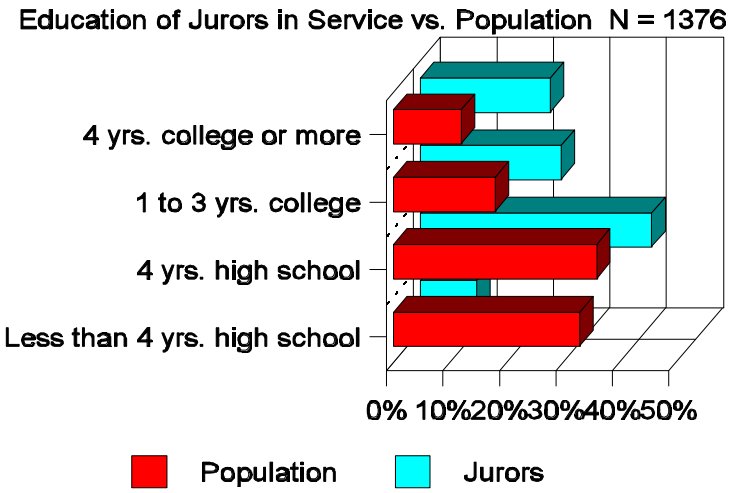
FIGURE 2



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Approximately half of the prospective jurors have a college degree or at least one year of college level courses. Only 10% lack a high school diploma. As Figure 3 shows, the juror pool is better educated and more likely to have completed some level of higher education than the general population. Census figures indicate that 33% of the population lacks a high school diploma, 36% has a high school education, and only 30% has some college or a college degree.

FIGURE 3



There is no significant variation on these demographic patterns among those jurors who served on one or more trials during the term or among jurors who served a shorter term of jury duty.

JUROR SERVICE PATTERNS

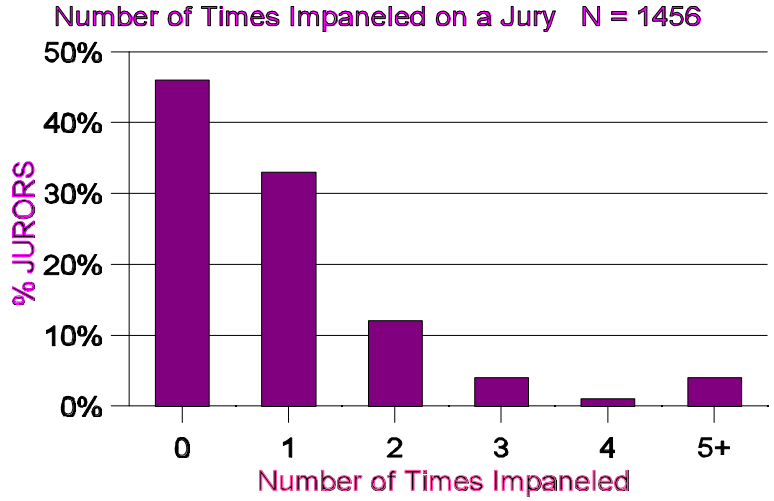
The average juror reported for service on 3 days during the term. Only 5% of the jurors were called into court on 10 or more days. Short-term-of-service jurors were more likely to have come to court more than the average number of days, while long-term jurors were more likely to have reported on only one day.

The average juror participated in 2 jury selections during the term. Fourteen percent of the jurors who reported were never involved in the selection process, while only 9% of the jurors participated in 5 or more voir dires while in service. The term of service bore no relationship to the likelihood of participating in a voir dire.

As shown in Figure 4, 46% of the jurors in service during the period were never impaneled on a jury. One-third were seated in only one trial and an additional 12% in two trials. Less than 10% participated in 3 or more trials during the period. Performance in this regard is slightly better than the national standard on juror utilization which calls for at least 50% of the available juror pool to be involved in a trial. The likelihood of serving on a jury was not related to the length of the term of service.

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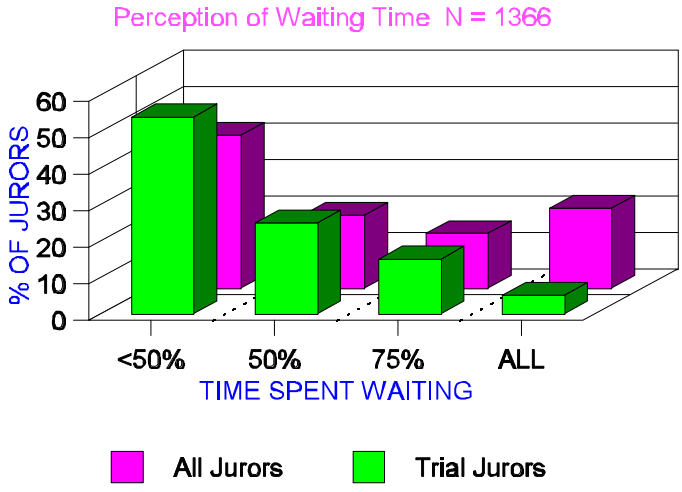
FIGURE 4



Excessive time spent waiting while on jury duty is one of the most commonly held stereotypes about service. The data suggests that this was part of the experience for those in service during the period under study. While 43% of the jurors reported that they spent less than 50% of their time waiting, 22% said they spent almost all of their time in service waiting to be utilized, and more than one-third estimated time waiting to be between 50% and 75% of their total time in service. The length of term of service did not noticeably affect the jurors perceptions in this regard.

Jurors who participated in at least one trial during their service had a different impression of the amount of time spent waiting than the overall sample. More than three-quarters estimated it to be 50% or less of their time in service while only 5% reported that they spent almost all of their time waiting. Figure 5 compares these responses.

FIGURE 5



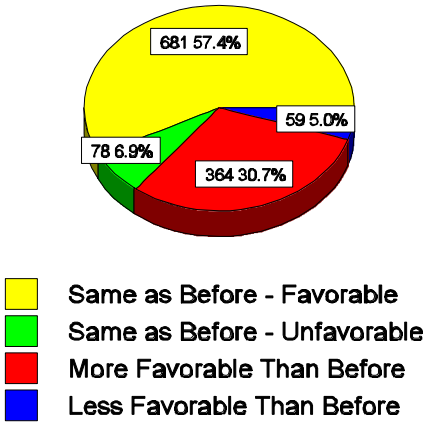
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ATTITUDES TOWARDS JURY SERVICE

Jurors' attitudes about their experience in service is one predictor of whether they will be willing to serve again if summoned. Clearly, jurors in the sample were positive in their evaluation of jury duty. As shown in Figure 6, when asked about their impression of jury service, more than half of the jurors reported that it was favorable and an additional one-third said it was more favorable than before they had served. Only slightly more than 10% said their impression of jury duty was unfavorable or less favorable than before they had served. These results did not vary based on whether the jurors had served on a trial or by the length of the term of service.

FIGURE 6

Jurors' Impressions of Service N = 1182



Despite the overall positive review, almost one-fifth of the jurors reported that service had posed a hardship for them. These jurors were more likely to express an unfavorable view of jury duty than the pool. In written comments submitted with the questionnaires jurors cited such factors as the uncertainty of the schedule, the impact on their job, and most notably the loss of income or other monetary cost incurred as the result of service.

FINANCIAL IMPACT OF SERVICE

The exit questionnaire attempted to ascertain the financial impact of jury duty on those who serve. Obtaining estimates from this instrument is flawed, however, in that it is likely that those who stand to lose the most or incur the greatest expense are excused from service and do not ever report to the court. Even so, 18% of those completing the questionnaire reported that they lost income as the result of service. Estimates of the amount lost per day varied widely, but averaged around $50 per day. Twenty percent of the jurors reported that their employer did not pay them while they were in service.

The majority of jurors reported no expenses incurred as the result of service. Approximately 25% said they paid from $.50 to $5.00 per day for parking and another 40%

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reported meal expenses averaging around $5.00. Only a very small percentages of jurors reported transportation, child care, or other expenses incurred as a result of service. Again, it may be that those who faced a substantial burden in this regard were excused.

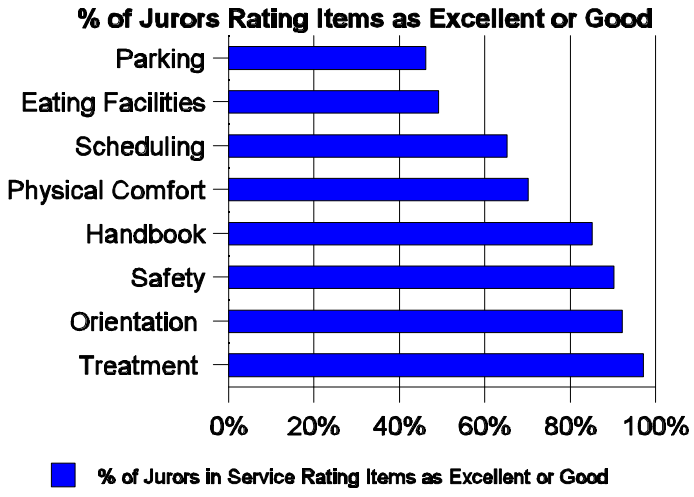
RATINGS OF AMENITIES

As part of the exit survey process, jurors were asked to rate certain aspects of jury service on a scale from "excellent" to "poor." Figure 7 shows the percentage of jurors rating a variety of physical and other factors associated with jury duty as excellent or good. Of note in this chart is the overwhelming percentage of jurors--97%--rating treatment by court personnel as excellent or good. In fact, a full 70% rated this aspect as excellent. National level research indicates that treatment by personnel is a primary factor influencing overall impressions of jury service.

Orientation and the juror handbook made available through the Administrative Office of the WVSCOA were also well received in the sample, although the majority of responses were in the "good" rather than the "excellent" range on these items. It should also be noted that approximately 20% of the jurors were in courts that do not distribute the handbook.

Some aspects of service rated by the jurors are not under the direct control of the court or its personnel, but are a function of a courthouse's physical accommodations. In most courthouses in the State, jurors must wait in the courtroom, there is no assembly area, and facilities for eating and parking are limited. Therefore, it is not surprising that these amenities would receive lower marks. Physical comfort was rated as only adequate or poor by almost one-third of the jurors, and more than 50% ranked parking and eating facilities as merely "adequate" or "poor". On the positive side, the lack of physical and other comforts did not detract from jurors perceptions of their personal safety. Only 10% rated personal safety as adequate or poor.

FIGURE 7



Jurors' ratings of the scheduling of their time

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received somewhat mixed reviews. While two-thirds of the jurors gave it high marks, another quarter ranked it as adequate and the remaining 10% as poor.

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APPENDIX D
INDEX OF RECOMMENDATIONS BY GOVERNMENTAL BODY

Issue	Supreme Court	WV Leg	Co Comm'n	State Bar	Others
1	1.1 1.2 1.3 1.4			1.2	1.2 (legal assistance) 1.4 (court clerks)
2	2.2 2.2	2.2 2.3 2.4 2.5	2.4		
3	3.1 3.2 3.3 3.4		3.1 3.2		
4		4.1		4.2 4.3	
5		5.1 5.2			
6	6.2 6.3 6.4 6.5 6.6 6.8	6.1			6.6 (Division of CJS) 6.6 (WVAV) 6.7 (prosecutors)
7	7.1 7.2 7.3 7.4 7.6	7.1 7.2 7.5 7.8	7.1 7.5 7.8		7.3 (sheriffs) 7.7 (CSB)
8	8.1 8.2				

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9	9.1 9.5 9.6 9.7 9.8	9.1 9.2 9.3 9.4			

Issue	**Supreme Court**	**WV Leg**	**Co Comm'n**	**State Bar**	**Others**
10	10.1 10.2 10.3 10.6 10.7	10.4 10.5		10.6	10.3 (RJ/CFA) 10.7 (CIOB)
11	11.1 11.2 11.3 11.4 11.5	11.5		11.4	11.2 (O of T) 11.2 (DHHR) 11.6 (WVU C of L) 11.6 (WVUCLE)
12	12.1 12.2 12.3 12.4 12.5 12.6				
13	13.1 13.2 13.3 13.4 13.5				13.2 (O of T)
14	14.2 14.3 14.4 14.5 14.6	14.1 14.4 14.7			

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15	15.1 15.4 15.5	15.1 15.2 15.3 15.4 15.5			15.1 (WV ADRC)
16	16.5	16.1 16.3 16.4 16.5			16.2 (DHHR OBHS)

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Issue	**Supreme Court**	**WV Leg**	**Co Comm'n**	**State Bar**	**Others**
17	7.1	17.1 17.2 17.3 17.4			17.1 (State Police) 17.1 (DOC)
18	18.1 18.2 18.3 18.4 18.5	18.5		18.3	
19	19.2 19.5	19.1 19.3 19.4			
20		20.2 20.3			20.1 (State)
21	21.1 21.3	21.2		21.1	21.2 (circuits)
22	22.6 22.8	22.1 22.2 22.4 22.5 22.7			22.3 (PDS/PDC)
23	23.1				
24	24.1 24.2				
25		25.1 25.3	25.2		
26	26.1 26.2 26.3 26.4				
Totals	**77**	**49**	**7**	**7**	**23**

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ACKNOWLEDGMENTS

The Commission received a great deal of assistance throughout its deliberations. To all the interested citizens, members of the Bar, faculty of the College of Law, judicial officers, and other court personnel who participated in the public hearings, responded to surveys, joined in the focus group, wrote or otherwise provided information, we extend our appreciation.

We are indebted to **Dr. Dan Straub** of the National Center for State Courts who facilitated the meetings and assisted in the development of the conceptual framework and plan for our work.

Special thanks are due those who chaired the four subcommittees and the staff attorneys who assisted them.

D.C. Offutt, Access to Justice Subcommittee Chair
Keith Jones, Staff Attorney

Catherine Munster, Expedition and Timeliness Subcommittee Chair
Susan Perry, Staff Attorney

Elaine Harris, Equality, Fairness, and Integrity Subcommittee Chair
Julia Hurney, Staff Attorney

Tom Tinder, Independence and Accountability Subcommittee Chair
John Hedges, Staff Attorney

Finally, we extend our appreciation for the competent and diligent assistance of the staff of **The Administrative Office of the Courts**.

Ted Philyaw, Administrative Director

Mary Durkin, Deputy Director

Alison Chambers, Attorney and Commission Liaison

Pepper Bryan, Administrative Secretary

Pam McCracken, Administrative Assistant