



THE SUPREME COURT OF APPEALS OF WEST VIRGINIA



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Justices of the Supreme Court of Appeals

Chief Justice Brent D. Benjamin
Justice Robin Jean Davis
Justice Margaret L. Workman
Justice Menis E. Ketchum
Justice Allen H. Loughry II

Clerk of Court Rory L. Perry II
Administrative Director Steven D. Canterbury

Credits

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Pictured at left: The skylight in the Supreme Court Chamber, designed by Capitol architect Cass Gilbert

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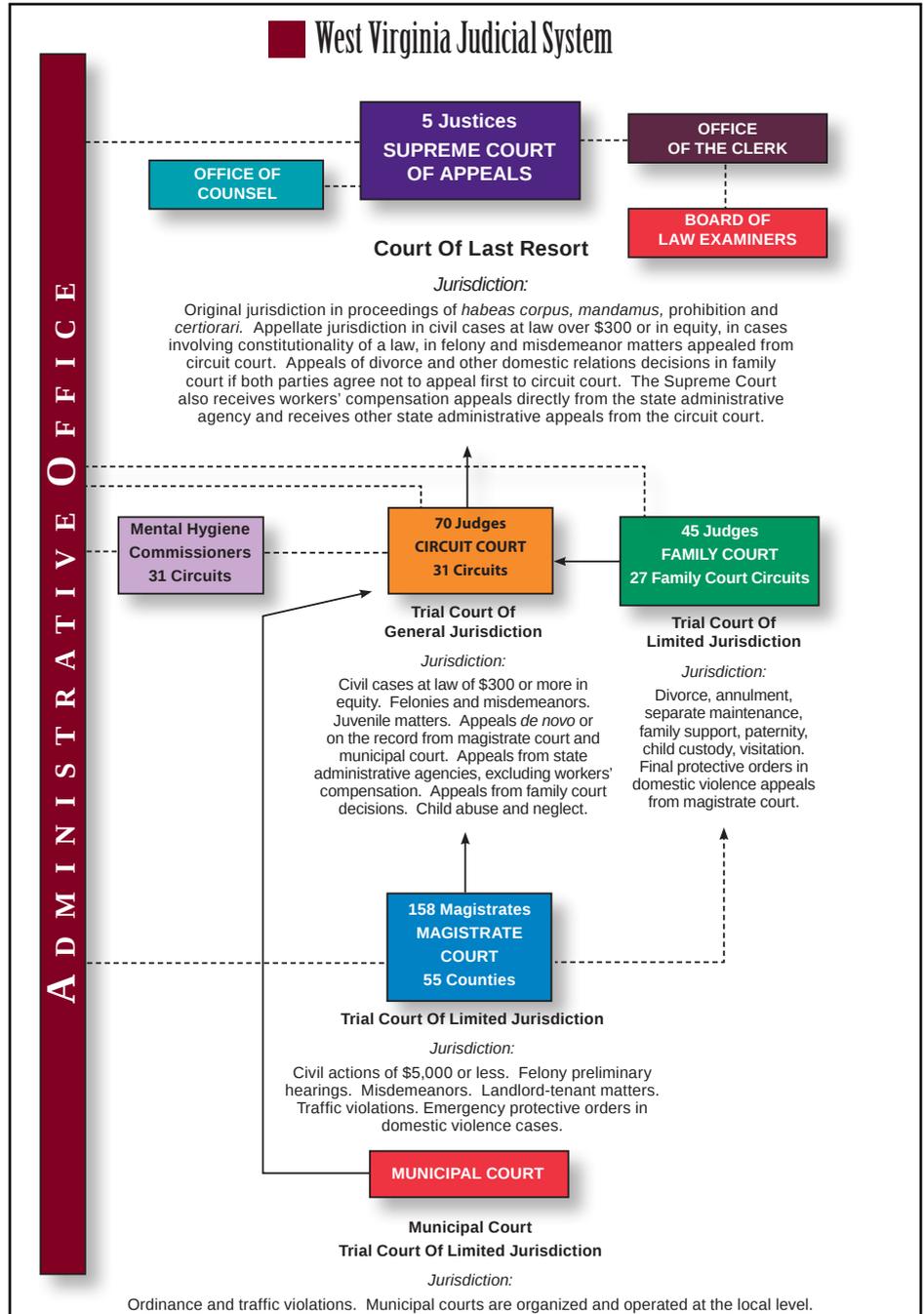
Glossary

HABEAS CORPUS – Petition for relief from unconstitutional confinement, used mainly by inmates

MANDAMUS – Petition for a superior court to require a public body, inferior court, or public official to perform a required duty

PROHIBITION – Petition for a superior court to halt the performance of a particular act by an inferior court, state agency, or public official

CERTIORARI – Petition to remove a case from a lower court to a higher court



The West Virginia Judicial System

T

he judiciary is one of three coequal branches of state government, each with separate powers. The legislative branch makes the law. The executive branch enforces the law. The judicial branch interprets and applies the law in cases brought before the courts.

West Virginia became a state on June 20, 1863. The present West Virginia Constitution was ratified in 1872. In 1880, the West Virginia Legislature rewrote the entire judicial article, which the voters adopted.

The most important recent event in the history of the West Virginia judiciary occurred on November 5, 1974, when voters ratified the Judicial Reorganization Amendment, which became effective on January 1, 1976. This amendment ended the justice-of-the-peace system and established a unified court system, uniting all state courts, except municipal courts, into a single system supervised and administered by the Supreme Court of Appeals of West Virginia. The amendment organized the judiciary into three levels: the Supreme Court of Appeals, circuit courts, and magistrate courts. In November 2000, voters passed a constitutional amendment to allow the Legislature to create separate family courts. The new family courts began operating on January 1, 2002.

In 2010, the Supreme Court of Appeals revised the Rules of Appellate Procedure, fundamentally changing the appeal process to provide an appeal of right instead of an appeal by permission. The revised rules are an effective method of providing a full review and a decision on the merits in all properly prepared and filed appeals.

The Supreme Court of Appeals

The Supreme Court of Appeals is West Virginia's highest court and the court of last resort. West Virginia is one of only ten states with a single appellate court. The Supreme Court of Appeals of West Virginia is one of the busiest appellate courts of its type in the United States.

The five Supreme Court Justices hear appeals of decisions over all matters decided in circuit courts, including criminal convictions affirmed on appeal from magistrate court. Workers' compensation appeals are unique and are appealed directly to the Supreme Court from the administrative agency. The Justices also hear appeals of domestic relations decisions decided in family court if both parties agree they will not appeal directly to the circuit court.

Furthermore, the Justices have extraordinary writ powers and original jurisdiction in proceedings of *habeas corpus*, *mandamus*, prohibition, and *certiorari*. They also interpret the laws and Constitutions of West Virginia and the United States.

Although most arguments before the Supreme Court of Appeals are presented by attorneys, unlike trials in lower courts, there are no witnesses, juries, or testimony. Opinions of the Supreme Court of Appeals of West Virginia can be appealed only to the Supreme Court of the United States, which may or may not agree to consider an appeal.

There are two terms of the Court each year. The first term begins on the second Tuesday in January. The second term begins on the first Wednesday in September. The time period between terms is called *sine die*, which is Latin for "without day." When the Court is in session, the Justices hear cases and deliver opinions. At other times, the Justices consider emergency business that comes before the Court.

In addition to its judicial functions, the Supreme Court of Appeals has administrative and regulatory responsibilities. The Court has adopted a Code of Judicial Conduct, Rules for Admission to the Practice of Law, Rules of Professional conduct, and Rules of Judicial and Lawyer Disciplinary Procedure. The court sits in the capital city of Charleston, but may preside in other locations.

The five Justices are elected in partisan elections to twelve-year terms. Justices must have been lawyers for at least ten years. The position of Chief Justice is determined annually by a vote of the court. The governor appoints Justices to fill vacancies. An appointee who wishes to remain in office must run in the next election.

Following American custom since the 1800s, the Justices wear black robes. Further, as is customary in American courts, the Justices are seated by seniority on the bench. The Chief Justice occupies the center chair. The senior Justice sits to the right of the Chief Justice, the second senior to the Chief Justice's left, and so on, alternating right and left by seniority.

Circuit Courts

Circuit courts are West Virginia's only general jurisdiction trial courts of record. Circuit courts have jurisdiction over all civil cases at law over \$300; all cases in equity; proceedings in *habeas corpus*, *mandamus*, *quo warranto*, prohibition, and *certiorari*; and all felonies and misdemeanors. The circuit courts receive appeals from magistrate court, municipal court, and administrative agencies excluding workers' compensation appeals. The circuit courts also hear appeals of domestic relations decisions decided in family court unless both parties agree to appeal directly to the Supreme Court of Appeals. The circuit courts receive recommended orders from judicial officers who hear mental hygiene matters.

West Virginia's fifty-five counties are divided into thirty-one circuits with seventy circuit judges. The circuits range in size from one with seven

judges to nine with one judge. Although as few as one or as many as four counties comprise a circuit, each county has a courthouse or other judicial building where a circuit judge presides.

Circuit judges are elected in partisan elections to eight-year terms. They must have practiced law for at least five years. The governor appoints circuit judges to fill vacancies. An appointee who wishes to remain in office must run in the next election.

Family Courts

Family court judges hear cases involving such matters as divorce, annulment, separate maintenance, paternity, grandparent visitation, name change, infant guardianship, child custody, and family support proceedings, except those incidental to child abuse and neglect proceedings. Family court judges also conduct final hearings in civil domestic violence protective order proceedings and may perform marriages. There are forty-five judges who serve in twenty-seven family court circuits. Family court judges must have practiced law for at least five years. In 2002, family court judges ran in partisan elections for an initial six-year term. Subsequent terms, beginning in 2009, are for eight years, mirroring the terms of circuit court judges.

Mental Hygiene System

Mental hygiene commissioners are lawyers who preside over hearings on involuntary hospitalization, guardianship, and conservatorship. There is at least one mental hygiene commissioner in each of West Virginia's thirty-one circuits. Those commissioners have access to the West Virginia Mental Health Registry, which can help keep weapons out of the hands of people who have mental illnesses. Information on the Registry is capable of being reported to the FBI's National Instant Criminal Background Check System.

Magistrate Courts

There are 158 magistrates statewide, with at least two in every county and ten in the largest county, Kanawha. Presiding over these trial courts of limited jurisdiction, magistrates issue arrest and search warrants, hear misdemeanor cases, conduct preliminary examinations in felony cases, and hear civil cases with \$5,000 or less in dispute. Magistrates also issue emergency domestic violence protective orders. Magistrates run for four-year terms in partisan elections. They do not have to be lawyers. Circuit judges appoint magistrates to fill vacancies. An appointee who wishes to remain in office must run in the next election.

Municipal Courts

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

Appellate and Trial Court Clerks

Court clerks ensure the efficient operation of state courts by maintaining dockets and records, handling administrative matters, and serving as goodwill ambassadors to the public. The Clerk of the Supreme Court of Appeals, a constitutional officer, is appointed by the Court. Rory L. Perry II is the Supreme Court Clerk. Bruce A. Kayuha is the Chief Counsel. A circuit court clerk is elected in partisan elections in each county to a six-year term.

Administrative Office of the Courts

The Administrative Office of the Courts provides support to the Supreme Court of Appeals and the entire state court system. The director, appointed by the Court, is the administrative officer for the courts and oversees the Administrative Office. The Administrative Director, a constitutional officer, is Steven D. Canterbury.

West Virginia Supreme Court Public Education Programs

Justice Robin Jean Davis established **LAWS** (Legal Advancement for West Virginia Students) when she was Chief Justice in 1998. Each year, the Court holds an argument docket in a different county courthouse with an audience of local high school and college students. Once the location is selected, Court staff members present a teacher in-service training with the help of local circuit judges. Each class is assigned one appellate case to study with the help of local volunteer attorneys. On the day of the Court visit, each class hears the case that class has studied and attends a “debriefing” with the attorneys who argued that case.

Justice Davis established the **Robes to Schools** program in January 2007. It encourages Justices, Circuit Court Judges, Family Court Judges, and Magistrates to read books to West Virginia elementary school classes and to talk about the judicial system in middle schools and high schools.

West Virginia Law Adventure is a mock trial program for middle school and high school students. Each class must write a script based on one of three scenarios written by the Young Lawyers Section of the West Virginia State Bar and perform the script at a courthouse in front of a judicial officer. Then they mail their scripts to the State Bar. The Young Lawyers Section chooses the winners who subsequently present the trials in the Supreme Court Chamber. Trips to the courthouses and the Supreme Court are partially funded by a grant from the West Virginia Bar Foundation.

The Court participates in a project of the National Center for State Courts entitled *Justice Case Files*, a graphic novel series that addresses legal issues relevant to students. Schools in West Virginia receive copies of *Justice Case Files* graphic novels, along with corresponding lesson plans for teachers, from the Division of Children’s Services each year.

For more information on any of the public education programs, contact Public Education Coordinator Kandi Greter-Kirk of the Division of Children’s Services at (304) 340-2755.

The Justices of the Supreme Court of Appeals



Chief Justice Brent D. Benjamin was elected to a twelve-year term on the Supreme Court of Appeals of West Virginia in November 2004. He is a native of Marietta, Ohio. Chief Justice Benjamin is a graduate of The Ohio State University, from which he holds a bachelor's degree and a *Juris Doctor* degree, and where he played varsity sports. After graduation from law school in 1984, he settled in Charleston, West Virginia, and joined the Robinson & McElwee, PLLC, law firm, eventually becoming a partner/member. Chief Justice Benjamin is a regular speaker at national and international forums, including the American Bar Association's Annual Meeting, the National Press Club in Washington D.C., and at numerous law schools and a variety of bar-related groups. Chief Justice Benjamin also frequently appears as a guest on radio and television broadcasts and in print media to explain the judicial system and constitutional principles. On the Supreme Court of Appeals, Chief Justice Benjamin has been a leader in the expansion of treatment courts in West Virginia, including Drug Courts, Veterans Courts, and Mental Health Courts. He has actively advanced court access issues, children's issues, drug and mental health issues, and domestic violence issues. As

Chief Justice in 2009, he established West Virginia's Access to Justice Commission, a Compliance Committee on Prisons and Jails, a nationally-acclaimed Domestic Violence Database, and a statewide Mental Hygiene Registry. He also has worked to enhance and expand court outreach, public education, and media-court relations. Chief Justice Benjamin's twenty-year practice at Robinson & McElwee involved general civil litigation in state and federal courts, including civil rights, toxic torts and complex litigation. His civil rights practice focused on protecting children from physical and sexual abuse. He has practiced before the United States Fourth Circuit Court of Appeals, the United States District Court for the Southern District of West Virginia, the Supreme Court of Appeals of West Virginia, and before various courts in the Commonwealth of Kentucky. Chief Justice Benjamin is a fellow of the Salzburg Seminar in Austria, a graduate of Leadership West Virginia, a member of the Judicial Division of the American Bar Association, and a member of the Hocking College Archaeological Mission and the Amenmesse Project. Away from his judicial duties, he has actively participated in archaeological excavations in the United States and Egypt, including, most recently, the excavation of KV10 and KV63 (the first intact tomb to be discovered in the Valley of the Kings since the discovery of the tomb of Tutankhamun) and the re-excavation of TT320 (also known as the "Royal Cache Tomb"). Chief Justice Benjamin attends Christ Church United Methodist, in Charleston, and is the father of five children.



Justice Robin Jean Davis was born in Boone County, West Virginia, on April 6, 1956. She is married to Scott Segal, and they have one son, Oliver. She received her bachelor's degree from West Virginia Wesleyan College in 1978, and her master's degree and law degree from West Virginia University in 1982. She was engaged in the private practice of law from 1982 until 1996 at the six-person law firm of Segal and Davis, L.C. She concentrated in the field of employee benefits and domestic relations. In 1993, she became the first lawyer in West Virginia to be inducted into the American Academy of Matrimonial Lawyers. In 1991, the Supreme Court of Appeals appointed her to the seven-person West Virginia Board of Law Examiners, on which she served until her election to the Supreme Court in 1996. She initially was elected to an unexpired term and was re-elected in November 2000 and November 2012 to full twelve-year terms. Justice Davis served as Chief Justice in 1998, 2002, 2006, 2007, and 2010. Under her leadership as Chief Justice in 2010, the Court approved Revised Rules of Appellate Procedure, which modernize and comprehensively change the appellate process in West Virginia to provide a decision on the merits in every case. The Court in 2010 also approved new Rules of Juvenile Procedure. Currently, Justice Davis is the Supreme Court's designee to the Judiciary's Initiative on Truancy and in that role she has held more than a dozen public meetings to encourage collaborative community truancy programs. In her

previous terms as Chief Justice, she initiated a number of programs which have proven to be essential to the Court's continuing work with children and families and that have allowed the Judicial Branch to remain current with the constant changes in technology. These initiatives include the Workers' Compensation Mediation Program; the expansion of parent education programs; Rules on Mass Litigation; the expansion of courtroom technology, including the video initial appearance pilot project; the creation of the West Virginia Trial Court Rules; the establishment of an online Child Abuse and Neglect database; and additions to legal rules governing child abuse and neglect proceedings. In 2007 she led the West Virginia delegation to the National Judicial Leadership Summit in New York City, and she was responsible for the Court using a competitive federal grant to initiate the West Virginia Domestic Violence Registry. Under her guidance, the Supreme Court Administrative Office also received other major grants which have been used to improve the way the court system handles abuse and neglect cases. She expanded the Supreme Court's outreach efforts by taking the Court for the first time in recent years to Wheeling and Charles Town, the beginning of what are now regular out-of-Charleston argument dockets. She established the LAWS program for high school students and the Robes to Schools program for all West Virginia school students. In 2000, Justice Davis received the Distinguished West Virginian Award from then-Governor Cecil H. Underwood. In 2008 she received the Graduate of Distinction Award from the West Virginia Education Alliance. Justice Davis is the author of several West Virginia Law Review articles, including "A Tribute to Franklin D. Cleckley: A Compendium of Essential Legal Principles from his Opinions as a Justice on the West Virginia Supreme Court of Appeals;" "A Tribute to Thomas E. McHugh: An Encyclopedia of Legal Principles from his Opinions as a Justice on the West Virginia Supreme Court of Appeals;" and "An Analysis of the Development of Admitting Expert Testimony in Federal Courts and the Impact of that Development on West Virginia Jurisprudence." She is the co-author with Louis J. Palmer, Jr., of "Punitive Damages Law in West Virginia" and "Workers' Compensation Litigation in West Virginia: Assessing the Impact of the Rule of Liberality and the Need for Fiscal Reform." She is the co-author with former Justice Cleckley and Mr. Palmer of the *Litigation Handbook on West Virginia Rules of Civil Procedure*. She has given numerous presentations at West Virginia Judicial Association conferences and community forums. Justice Davis is the most senior member of the Supreme Court of Appeals.



Justice Margaret L. Workman was elected to the Supreme Court of Appeals in November 2008. She previously was elected to the Court in November 1988, when she became the first woman elected to the Court and the first woman elected to statewide office in West Virginia. Chief Justice Workman was born in Charleston, the daughter of Mary Emma Thomas Workman and Frank Eugene Workman, a coal miner whose ancestors were among the first settlers of Boone County. Justice Workman attended Kanawha County public schools and was the first in her family to go to college. She attended West Virginia University and the West Virginia University College of Law. After she received her law degree in 1974, she served as assistant counsel to the majority of the U.S. Senate Public Works Committee, whose chairman was Senator Jennings Randolph of West Virginia. She returned to West Virginia to work as a law clerk to the Thirteenth Judicial Circuit (Kanawha County). In 1976, she served as an advance person in the Carter Presidential Campaign, and she later worked on the campaign staff of U.S. Senator Jay Rockefeller. She then opened her own law office in Charleston. In 1981, Justice Workman became the youngest circuit court judge in the state when then-Governor

Jay Rockefeller appointed her to the Kanawha County Circuit Court. She ran for the unexpired term in 1982 and the full term in 1984. As a circuit judge, Justice Workman inherited West Virginia's largest backlog of cases, and during her tenure on the court reduced it to the lowest in the circuit and held more jury trials than any other circuit judge in the state during the same period. She also visited every prison and secure juvenile correctional facility in West Virginia. After her election to the Supreme Court in 1988, Margaret Workman served as Chief Justice in 1993 and 1997. In her capacity as Chief Justice, she fostered a close working relationship between the court system and domestic violence programs, and she visited many shelters to learn how the court system could be more effective in addressing domestic violence. Chief Justice Workman created the Task Force on Gender Fairness in the Courts and the Task Force on the Future of the Judiciary. She formed the Broadwater Committee, which made reforms in the court system's response to children's issues and spearheaded the development of rules governing child abuse and neglect cases. In her tenure as Chief Justice in 2011, she focused on improving rehabilitation services for juveniles. Justice Workman has been active in church and community activities, and she is the mother of Lindsay, Chris, and Ted Gardner.



Justice Menis Ketchum was elected to a full twelve-year term of the Supreme Court of Appeals on November 4, 2008. He served as Chief Justice in 2012. Justice Ketchum was born in 1943 in Huntington, West Virginia, and was raised in Wayne County. He was educated in Wayne County public schools before attending Ohio University in Athens, Ohio, where he played varsity baseball and was a member of the 1964 Mid-American Conference Championship Baseball Team. Justice Ketchum returned to West Virginia to attend West Virginia University College of Law. While in law school he was a contributing writer and associate editor of the *West Virginia Law Review*. He received his law degree in 1967 and returned to Huntington to join his father, Chad W. Ketchum (1911-1998), in the practice of law with the firm of Greene, Ketchum & Baker. He practiced at that firm and its successors, eventually becoming the senior partner, until his election to the Court. Justice Ketchum's law practice included insurance defense, personal injury, and criminal defense. He was recognized continuously from 1989 to 2008 in The Best Lawyers in America and was a member of the Leading Honoraries, the American College of Trial Lawyers, and the American Board of Trial Advocates.

Throughout his legal career he published legal articles and presented numerous continuing legal education seminars. Justice Ketchum also served as a member of the Board of Governors of Marshall University from 2002 until his campaign for the Court, and served as Chairman or Vice-Chairman of the Board from 2003 until 2008. At the time of his election to the Court, he served on the Boards of the Public Defender Corporations for the Sixth and Twenty-Fourth Judicial Circuits. He previously served on the Huntington Urban Renewal Authority, participated in the statewide Vision Shared Health Care Team, and the Governor's Mine Safety Task Force. Justice Ketchum has been married to the former Judy Varnum since 1966. They have three children – Kelli Morgan, Bert Ketchum, and Chad Ketchum – and six grandchildren.



Justice Allen H. Loughry II was elected to a twelve-year term on the Supreme Court of Appeals of West Virginia in 2012. He was born in Elkins, West Virginia, in 1970 and raised in Tucker County, West Virginia. He obtained four law degrees: an S.J.D. (Doctor of Juridical Science) from The American University, Washington College of Law; an LL.M. (Master of Laws in Criminology and Criminal Justice) from the University of London; an LL.M. (Master of Laws in Law and Government) from The American University, Washington College of Law; and a JD (*Juris Doctor*) degree from Capital University School of Law, where he graduated with the honor of Order of the *Curia*. He studied law in England at the University of Oxford and received the program's top political science award. He has a Bachelor of Science degree in Journalism from West Virginia University. While there, he served on the West Virginia University Judicial Board. Justice Loughry was a Senior Assistant Attorney General in the West Virginia Attorney General's Office from 1997 to 2003. He served in both the Appellate and Administration Divisions. He was appointed as a special prosecuting attorney on numerous occasions to handle criminal cases throughout West Virginia. Justice Loughry has

argued a significant number of cases before the West Virginia Supreme Court in addition to having argued or filed legal pleadings in the Supreme Court of the United States, the United States Court of Appeals for the Fourth Circuit, and the United States District Courts for the Southern and Northern Districts of West Virginia and the Southern District of Florida, among other legal forums. Justice Loughry served as a Special Assistant to U.S. Rep. Harley O. Staggers, Jr., and as a Direct Aide to West Virginia Governor Gaston Caperton. In 1997, he completed a legal externship at the Ohio Supreme Court. He also served as a personal assistant to the Tucker County Prosecuting Attorney in 1988 and 1989. Additionally, he wrote for two newspapers (*The Parsons Advocate* and *The Dominion Post* of Morgantown) and was a freelance writer for the Associated Press. Justice Loughry began working as a lawyer at the Supreme Court of Appeals of West Virginia in 2003. In 2006, his book, *Don't Buy Another Vote, I Won't Pay for a Landslide*, was published. It is a non-partisan look at West Virginia's history of political corruption. Forewords were written by U.S. Senator John McCain (R-AZ) and the late U.S. Senator Robert C. Byrd (D-WV). Justice Loughry began teaching political science at the University of Charleston in 2010. Due to his academic and professional background, Justice Loughry is a frequent speaker throughout the country on issues of government, ethics reform, politics, history, education, and the election process. Justice Loughry and his wife, Kelly, a native of Morgan County, West Virginia, have one son, Justus. They live in Charleston.

"Drawing Lots"

A Historical Perspective of the West Virginia Supreme Court

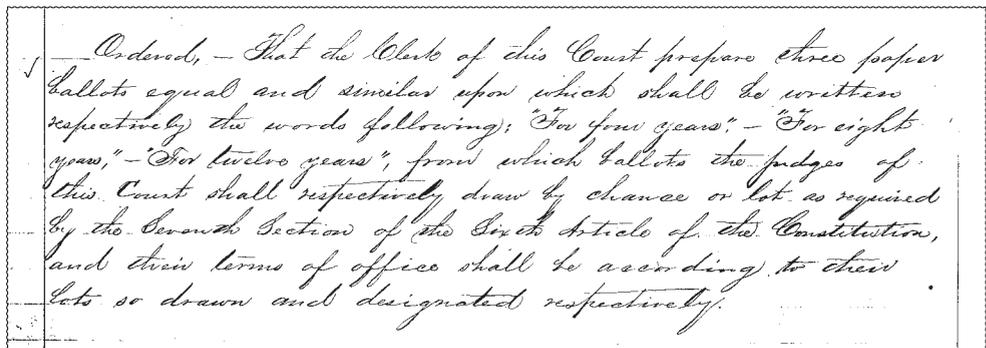
By Supreme Court Clerk Rory L. Perry II

The Supreme Court of Appeals of West Virginia has changed a great deal since the state was formed in 1863. Once called judges, members of the Court are now called justices and number five rather than three. Public institutions need to honor tradition; the judiciary has a special duty to remember history because the daily work of deciding disputes rests upon the ability to understand and clarify prior decisions. In West Virginia, Supreme Court terms began with chance drawings whose outcome would have a lasting impact.

On July 9, 1863, just days after the Confederate defeats at Gettysburg and Vicksburg, three judges gathered in a room at the Wheeling courthouse to organize the Supreme Court of the new state of West Virginia. The three men had all played a part in the remarkable events that led to the creation of the state, so the recent Union victories must have been welcome news.

Part of the day was spent taking care of the routine details needed to create and maintain a court: appointing a court crier and a court clerk, authorizing the purchase of books and stationery, and so forth. The main event of the day was a chance drawing of lots.

The three judges had many things in common. Each was a Republican and Union supporter. Each had been a practicing lawyer who became a circuit



Pictured is a page from 1863 order book no. 1.

judge as a result of the June 1861 convention of the restored government of Virginia. The convention imposed certain test oaths upon officeholders; when sitting circuit judges refused to take oaths to support the Union, vacancies were created, and each of the three men had filled one of those vacancies. Each was subsequently elected to be a judge of the Supreme Court, and none knew how long they would serve. The first Constitution of the state required that decision to be made by chance.

The Supreme Court's first recorded order of business was to appoint William A. Harrison of Harrison County as president *pro tempore* "until the lots hereinafter directed shall be drawn; and thereafter the judge who shall draw the shortest term shall be president during his official term," according to early Court records.

As the senior member of the Court at age 66, William Harrison was "of large stature and commanding presence." His "powers as an advocate were of a pre-eminent character," according to the first volume of the West Virginia Reports. Harrison was born in Prince William County, Virginia., and learned the law with his brother-in-law in Winchester, Virginia., before setting up practice in Parkersburg in 1819. After he moved to Clarksburg in 1821, he represented Harrison County for three terms in the Virginia General Assembly. He was an early opponent of secession.

Ralph Lazier Berkshire, then 47, grew up in Monongalia County. He learned the carpentry trade, later read law and was appointed prosecutor. Upon learning of the secession ordinance in April 1861, Berkshire helped organize an impromptu meeting of citizens "to define the position of the loyal people of the county on the momentous issues thus thrust upon them," according to the first volume of West Virginia Reports. Berkshire served on the resolutions committee, and the citizens unanimously endorsed a resolution condemning Virginia's decision to secede from the Union.

The third judge at the gathering in Wheeling was the youngest; James Henry Brown was 44. Just a few years earlier, Brown nearly had been killed in a buggy accident. He recovered to become a vigorous participant in the public



The first West Virginia Capitol in Wheeling



debates about secession, and he later urged division as the only solution remaining at the convention in Wheeling. The turbulence of the times is aptly set forth in this description of Brown's service as a circuit judge in 1861 and 1862, according to the first West Virginia Reports:

He entered at once on the duties of his official office, and amid many perils and great discouragements, held court in every county of his circuit. The records of his courts were captured and carried off or destroyed as fast as he made them, in many of the counties of his circuit, by the rebel raiders who continually made hostile incursions into that part of the State. And on several occasions he narrowly escaped their repeated efforts to capture the Court.

The three judges were joined by Sylvanus Hall, a Marion County lawyer who had been assistant clerk of the Wheeling Constitutional Convention. He was appointed to be the first clerk of the Supreme Court and served in that capacity until 1874.

As required by the Seventh Section of the Sixth Article of the 1863 Constitution, the clerk was directed "to prepare three paper ballots equal and similar upon which shall be written respectively the words following: 'For Four Years,' 'For Eight years,' 'For Twelve Years,' from which ballots the judges of this Court shall respectively draw by chance or lot."

When the lots were drawn, Berkshire drew the short term of four years and served as President of the Court. He continued to serve as president until he was defeated in the 1866 election by Edwin Maxwell. James H. Brown drew the eight-year term and served it fully. William Harrison drew the twelve-year term but resigned in September 1868. Ralph Berkshire became the first person to serve non-consecutive terms on the Court when he was appointed to fill Harrison's unexpired term. Berkshire was later elected to fill the remainder of the term by defeating Matthew Edmiston in the 1868 election. However, the 1872 Constitution effectively ended the twelve-year term won by Berkshire. Both Berkshire and Edmiston were defeated in 1872.

From the available records it does not appear that the Court handled any case-related matters that first day. One other important event did take place, however. The Court admitted attorneys to the practice of law, a precedent that is still followed.

Nine and a half years after the original lots were drawn at the courthouse in Wheeling, the ceremony was repeated again at the state Capitol in Charleston. The 1872 Constitution and implementing acts increased the number of judges on the Court from three to four, and the terms of the existing members of the Court were effectively extinguished.

The judges elected in 1872 were all Democrats and replaced two Republicans. Charles P.T. Moore, having been elected in 1870 and re-elected in 1872, served as temporary president on the basis of seniority. He was joined by the other three elected judges: Alpheus Haymond, James Paull, and John S. Hoffman.

At noon on January 23, 1873, in the presence of Clerk Sylvanus Hall and Governor John J. Jacob, the lots were again drawn. Haymond and Hoffman drew the four-year terms, Paull drew the eight-year term and Moore drew the twelve-year term. Haymond served as President of the Court until his retirement in 1883. Moore served until his retirement in 1881. Paull served only two and a half years until his death in May 1875. Hoffman served until his resignation in June 1876. The Court would continue to operate with four judges until 1903, when the number was increased to five, and the dates for election of the five judges were set.

The chance drawing of lots as required by two constitutions, together with the addition of a fifth member of the Court in 1903, combine to establish the term length and electoral pattern that continues to the present time. The 2008 election included one of the three original seats as well as the fourth seat added in 1872. The 2012 election included another of the original seats and the fifth seat added in 1903. In 2016, the election will include the final original seat.



Woodwork detail from a Cass Gilbert-designed table in the Supreme Chourt Chamber

Members of the Supreme Court of Appeals 1863-Present



RALPH LAZIER BERKSHIRE
Monongalia County
Republican
1863-1866



WILLIAM A. HARRISON
Harrison County
Republican
1863-1868



JAMES H. BROWN
Kanawha County
Republican
1863-1870



EDWIN MAXWELL
Harrison County
Republican
1866-1872



RALPH LAZIER BERKSHIRE
Monongalia County
Republican
1868-1872



CHARLES P.T. MOORE
Mason County
Democrat
1871-1881



JOHN S. HOFFMAN
Harrison County
Democrat
1873-1876



JAMES PAULL
Ohio County
Democrat
1873-1875



ALPHEUS F. HAYMOND
Marion County
Democrat
1873-1882



THOMAS C. GREEN
Jefferson County
Democrat
1875-1889



MATTHEW EDMISTON
Lewis County
Democrat
1876



OKEY JOHNSON
Wood County
Democrat
1877-1888



JAMES FRENCH PATTON
Monroe County
Democrat
1881-1882



ADAM C. SNYDER
Greenbrier County
Democrat
1882-1890



SAMUEL WOODS
Barbour County
Democrat
1883-1888



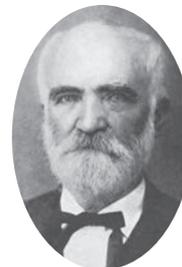
HENRY BRANNON
Lewis County
Democrat/Republican
1889-1912



JOHN W. ENGLISH
Mason County
Democrat
1889-1900



DANIEL B. LUCAS
Jefferson County
Democrat
1890-1892



HOMER A. HOLT
Greenbrier County
Democrat
1890-1896



MARMADUKE H. DENT
Taylor County
Democrat
1893-1904



HENRY CLAY McWHORTER
Kanawha County
Republican
1897-1908



GEORGE POFFENBARGER
Mason County
Republican
1901-1922



WARREN MILLER
Jackson County
Republican
1903-1904



FRANK COX
Monongalia County
Republican
1905-1907



JOSEPH M. SANDERS
Mercer County
Republican
1905-1907



WILLIAM N. MILLER
Wood County
Republican
1907-1928



IRA E. ROBINSON
Taylor County
Republican
1907-1915



L. JUDSON WILLIAMS
Greenbrier County
Republican
1909-1920



CHARLES W. LYNCH
Harrison County
Republican
1913-1921



JOHN W. MASON
Marion County
Republican
1915-1916



HAROLD A. RITZ
Mercer County
Republican
1917-1922



FRANK LIVELY
Kanawha County
Republican
1921-1932



JAMES A. MEREDITH
Marion County
Republican
1922-1924



WILLIAM H. MCGINNIS
Raleigh County
Democrat
1923-1924



MORONI ORSON LITZ
McDowell County
Republican
1923-1936



JOHN H. HATCHER
Raleigh County
Republican
1924-1940



HOMER B. WOODS
Ritchie County
Republican
1925-1936



HAYMOND MAXWELL
Harrison County
Republican
1928-1940



JOSEPH N. KENNA
Kanawha County
Democrat
1933-1950



FRED L. FOX
Braxton County
Democrat
1937-1952



JAMES B. RILEY
Ohio County
Democrat
1937-1958



HERSCHEL H. ROSE
Marion County
Democrat
1941-1945



WILLIAM T. LOVINS
Cabell County
Democrat
1941-1957



FRANK C. HAYMOND
Marion County
Democrat
1945-1972



LESLIE E. GIVEN
Kanawha County
Democrat
1950-1962



CHAUNCEY BROWNING
Logan County
Democrat
1952-1971



HENRY LAKIN DUCKER
Cabell County
Democrat
1957-1958



ROBERT TUCKER DONLEY
Monongalia County
Republican
1958



HARLAN M. CALHOUN
Hardy County
Democrat
1958-1972



THORNTON G. BERRY, Jr.
McDowell County
Democrat
1958-1976



FRED H. CAPLAN
Harrison County
Democrat
1962-1980



JOHN E. CARRIGAN
Marshall County
Republican
1971-1972



CHARLES H. HADEN, II
Monongalia County
Republican
1972-1975



OLIVER D. KESSEL
Jackson County
Republican
1972



JAMES M. SPROUSE
Monroe County
Democrat
1973-1975



RICHARD NEELY
Marion County
Democrat
1973-1995



EDWIN F. FLOWERS
Hancock County
Republican
1975-1976



DONALD R. WILSON
Jackson County
Republican
1976



SAM HARSHBARGER
Cabell County
Democrat
1977-1984



THOMAS B. MILLER
Ohio County
Democrat
1977-1994



DARRELL V. MCGRAW, Jr.
Wyoming County
Democrat
1977-1988



THOMAS E. MCHUGH
Kanawha County
Democrat
1981-1997



WILLIAM T. BROTHERTON, Jr.
Kanawha County
Democrat
1985-1995



MARGARET L. WORKMAN
Kanawha County
Democrat
1989-1999



FRANKLIN D. CLECKLEY
Monongalia County
Democrat
1994-1996



ARTHUR M. RECHT
Ohio County
Democrat
1995-1996



JOSEPH P. ALBRIGHT
Wood County
Democrat
1995-1996



ROBIN JEAN DAVIS
Kanawha County
Democrat
1996-



LARRY V. STARCHER
Monongalia County
Democrat
1997-2008



ELLIOTT E. MAYNARD
Mingo County
Democrat
1997-2008



JOHN F. MCCUSKEY
Kanawha County
Republican
1998



WARREN R. MCGRAW
Wyoming County
Democrat
1998-2004



GEORGE M. SCOTT
Roane County
Republican
1999-2000



JOSEPH P. ALBRIGHT
Wood County
Democrat
2001-2009



BRENT D. BENJAMIN
Kanawha County
Republican
2005-



MARGARET L. WORKMAN
Kanawha County
Democrat
2009-



MENIS E. KETCHUM
Wayne County
Democrat
2009-



THOMAS E. MCHUGH
Kanawha County
Democrat
2009-2012



ALLEN H. LOUGHRY II
Kanawha County
Republican
2013-

The Supreme Court Chamber

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he Court Chamber is located on the third floor of the east wing of the West Virginia Capitol, which was erected between July 1926 and December 1927. The Chamber is awe-inspiring, measuring 40 by 44 feet with a thirty-foot ceiling.

Above the Chamber is a rectangular skylight of stained glass. Bronze carvings depicting the “Scale and Balance” and the “Book of Law” adorn the sides of the skylight. In the frieze along the top of the walls in the Chamber are two quotations. The first one, from Thomas Jefferson’s *Notes on the State of Virginia*, is “The true foundation of republican government is the equal right of every citizen in his person and property and in their management.” The second quotation is from Abraham Lincoln’s second inaugural address: “Firmness in the right as God gives us to see the right.”

Columns of white Imperial Danby Vermont marble with bases of black Belgian marble surround the room. The walls are the same white Imperial Danby Vermont marble. Rich burgundy drapes line three sides of the room. The floor is a field of compressed cork in a checkerboard pattern surrounded by Vermont Verde Antique Marble. The furnishings, including the bench, are made of American walnut.

New York City architect Cass Gilbert designed the Court Chamber as well as the West Virginia Capitol. At the time of his commission, Gilbert was a nationally renowned architect who had designed the Capitol buildings of Minnesota and Arkansas, and the Woolworth building in New York City, once the tallest building in the world.

Gilbert took great care in planning the Court Chamber, personally designing the decor, the bench, and other furnishings. During the construction of the West Virginia Chamber, Gilbert was commissioned to design the Supreme Court of the United States, which was his final achievement before his death. Gilbert used West Virginia’s courtroom as a model for the Chamber in the Supreme Court of the United States.



THE EQUAL RIGHT OF EVERY CITIZEN IN HIS PERSON AND

The Seal of the Court

Since 1863, state law has required that the Court have a Seal. For well over one hundred years, the Seal of the Supreme Court of Appeals of West Virginia has simply been an embossed image without color. The creator of this Seal is, alas, unknown.

In 2009, Administrative Director Steve Canterbury proposed to the Court that color be added to the Seal. Furthermore, he suggested one small change, that the number of the stars in the battle shield be changed from eighteen to thirty-five, representative of West Virginia being the thirty-fifth state in the union.

The Court agreed with both suggestions, directing Mr. Canterbury to determine the colors for the Court's final approval. By September 2009, the colors shown in the Seal on the opposite page were approved.

The faded blue and yellow are not only reflective of West Virginia's official state colors of blue and gold, but in their less vibrant state suggest the long-standing tradition of the court system. The goddess Themis or her daughter Dice – each of whom is called the “Goddess of Justice” – sits immovably upon a bluestone bolder, a rock typical in central Appalachia. The boulder itself is on solid ground. She is, of course, blindfolded, holding the scales with her outstretched right hand. She cradles a sword of justice against her shoulder and seems to hold an American battle shield with her left hand. While it is not unusual for Justice to be depicted with scales and sword, the somewhat less common use of a battle shield seems reflective of West Virginia's founding during the Civil War when the western counties seceded from Virginia, especially since the shield is emblazoned with the union flag. In fact, the stack of Civil War-era cannon balls serves as another war-time element of the Seal and is a fundamental part of the foundation of West Virginia's Justice.

Most important to understanding the symbolism of the Court's Seal is the fact that Justice is sitting, neither standing nor in stride. This clearly is representative of the Judicial Branch's position within government: matters must be brought to the Court where Justice sits to hear them. This branch neither creates nor administers the law; a party must come to her where she sits.

While the creator of the Seal may have had emblematic reasons for the circle of sixty dots and the use of a rope motif for the outer edge of the circle, with this artist's name, those reasons have been lost to history.



Visitor Services

The Court provides tours of the Chamber on request. To schedule a tour, please contact the Clerk's Office at (304) 558-2601 between 9 a.m. and 5 p.m., Monday through Friday, excluding holidays. For additional information on the Supreme Court of Appeals of West Virginia, please contact the Supreme Court Public Information Office, State Capitol, 1900 Kanawha Boulevard E., Building 1, Room E-100, Charleston, WV 25305, phone (304) 340-2305 or 340-2306, fax: (304) 558-1212, e-mail: jennifer.bundy@courtswv.gov. The Supreme Court's website: www.courtswv.gov.

