

The

# L A W S

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Project



Legal Advancement For West Virginia Students

A Project of the Supreme Court of Appeals of West Virginia



Information about the West Virginia court system, including Supreme Court of Appeals opinions, is available on the Internet at:

[www.state.wv.us/wvsca](http://www.state.wv.us/wvsca).

For further information please contact:

Jennifer Bundy , Information Services Director at 304-340-2305 or email: [jenniferbundy@courtswv.org](mailto:jenniferbundy@courtswv.org)  
or Kandi L.Greter, Information Services Specialist at 304-340-2306 or email: [kandigreter@courtswv.org](mailto:kandigreter@courtswv.org)

Fax: 304-558-1212

# Table of Contents

Letter from Chief Justice R o b i n J e a n D a v i s .....	4
Schedule .....	5
Protocol .....	6
Introduction to the West Virginia Judicial System .....	7
Chart of the West Virginia Judicial System .....	8
Supreme Court of Appeals .....	9
Circuit Courts - Trial Courts of General Jurisdiction .....	10
Map of Judicial Circuits .....	11
Family Courts .....	12
Judicial Officers .....	12
Magistrate Courts -Trial Courts of Limited Jurisdiction .....	12
Municipal Courts .....	13
Appellate and Trial Court Clerks .....	13
Administrative Office of the Courts .....	13
The Justices of the Supreme Court of Appeals .....	14-18
Members of the Supreme Court of Appeals .....	19 - 22
The Court Chambers .....	22-23
Federal Courts .....	24
Glossary of Legal Terms .....	25-33



**SUPREME COURT OF APPEALS**

STATE CAPITOL COMPLEX

ROOM E-301

CHARLESTON, WEST VIRGINIA 25305

(304) 558-4811

**ROBIN JEAN DAVIS**

*Chief Justice*

Ladies and Gentlemen:

The Supreme Court of Appeals of West Virginia is especially pleased to welcome young West Virginians and their teachers to this Supreme Court session. We are extremely excited to hold LAWS in Romney this year and give the students of Hardy, Hampshire and Pendleton counties an opportunity to see first hand how the Supreme Court hears cases.

Our legal system ensures the stability of our nation and guarantees that our society will remain independent, democratic, and tolerant of diversity. To preserve the strength of our legal system, we need to have confidence in the law's ability to protect our individual rights, settle our disputes, and bring us together.

The LAWS project is part of the Supreme Court's commitment to educate students across West Virginia about the judicial branch of government. We are proud to celebrate our ninth annual LAWS project with you this year. We hope that your participation in LAWS will help increase your understanding and appreciation of the justice system.

Sincerely,

*Robin Jean Davis, C.J.*

Robin Jean Davis

Chief Justice

**The LAWS Project**  
Legal Advancement for West Virginia Students  
April 17, 2007  
Hampshire County Courthouse  
East Main Street  
Romney, WV 26757

- 9:45 a.m. Students from Moorefield High School enter courtroom.
- 10:00 a.m. *Jerome E. Burch, et al. v. Nedpower Mount Storm, et al.*
- 10:30 a.m. Break. Students leave courtroom for debriefing with attorneys at the The Bottling Works. Students from Potomac Sate College enter courtroom.
- 10:45 a.m. *State of W. Va. v. Denver A. Youngblood, Jr.*
- 11:15 a.m. Break for lunch.
- 11:30 a.m. Lunch period begins.
- 12:35 p.m. Students from East Hardy High School and Pendleton County High School enter courtroom.
- 12:45 p.m. *Hartley Hill Hunt Club, et al. v. County Commission of Ritchie County, et al. No debriefing*
- 1:15 p.m. Break. Students leave chambers for debriefing with attorneys at the The Bottling Works. Students from Hampshire High School and West Virginia Schools for the Deaf and the Blind enter courtroom.
- 1:30 p.m. *State of W. Va. v. Daniel Murray*
- 2:00 p.m. Court adjourns. Students remain in courtroom for debriefing with attorneys.

\* Following lunch, students from the first morning session may return to their schools. Following lunch, students from the second morning session will have a debriefing with attorneys at The Bottling Works and then return to their schools. Students attending the afternoon sessions will come to lunch first and then to the courtroom to hear their LAWS case.

# Protocol

Please remember that while you are in a courtroom certain protocol must be observed. Your cooperation will ensure that the lawyers presenting arguments before the Court will not be distracted and proper respect for the judiciary will be maintained.

## DO

CDress appropriately.

CRemove hats before entering the courtroom.

CEnter the courtroom prior to the commencement of an argument.

CSit when the justices enter and leave the courtroom.

CListen attentively to courtroom proceedings.

CAddress a member of the Supreme Court as “justice” or “chief justice,” followed by the last name. All judges may be called “your honor.”

## DO NOT

CBring weapons of any kind to LAWS. This includes pocket knives.

CBring backpacks, pocketbooks, purses, or any other items such as these.

CBring food, drinks, cameras, recorders, cell phones, or pagers into the courtroom.

CEnter or leave the courtroom during an argument.

CCheW gum or create any distraction in the courtroom.

CEngage in any conversation once an argument begins.

CDiscuss the cases with the justices.

# Introduction to the West Virginia Judicial System



The 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 event in the history of the West Virginia judiciary occurred on November 5, 1974, when the 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, the voters passed a constitutional amendment to allow the Legislature to create separate family courts. The new family courts went into effect on January 1, 2002.

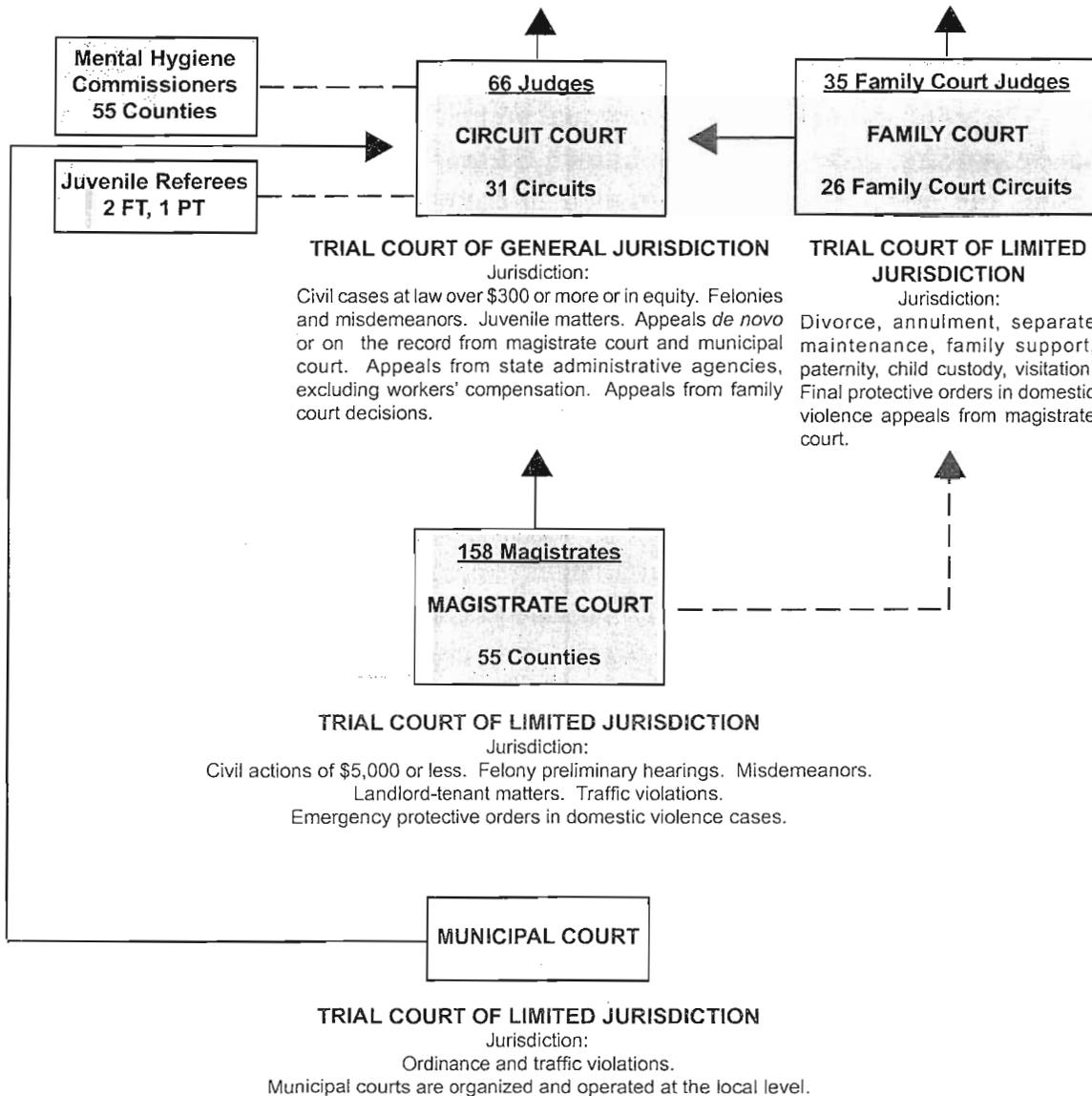
# WV Judicial System



## COURT OF LAST RESORT

Jurisdiction:

Original jurisdiction in proceedings of *habeas corpus*, *mandamus*, prohibition, and *certiorari*. Appellate jurisdiction in civil cases at law over \$300 or in equity, in cases involving constitutionality of a law, in felony and misdemeanor matters appealed from circuit court. Appeals of divorce and other domestic relations decisions in family court if both parties agree not to appeal first to circuit court. The Supreme Court also receives workers' compensation appeals directly from the state administrative agency and receives other state administrative appeals from the circuit court.



## **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 11 states with a single appellate court. The Supreme Court of Appeals of West Virginia is the busiest appellate court of its type in the United States.

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

The justices also 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. The Court's jurisdiction is entirely discretionary. It may either grant or refuse review of any case.

Arguments before the Supreme Court of Appeals are presented by attorneys. Unlike trials in lower courts, there are no witnesses, juries, or testimony. After justices have heard oral arguments and reviewed attorneys' written materials, known as briefs, they issue written decisions, or opinions. Supreme Court of Appeals opinions can be appealed only to the United States Supreme Court, 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 and ends in July. The second term begins on the first Wednesday in September and ends in December. 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 the 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 travel to other locations.

The five justices are elected in partisan elections to 12-year terms. Justices must have practiced law for at least 10 years. The position of chief justice is a rotating one-year position based on seniority. 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 -Trial Courts of General Jurisdiction**

The 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 civil cases in equity; proceedings in habeas corpus, mandamus, quo warranto, prohibition, and certiorari; and all felonies and misdemeanors. The circuit courts also hear appeals of family court decisions unless both parties agree to appeal directly to the Supreme Court of Appeals. The circuit courts receive appeals from magistrate court, municipal court, and administrative agencies, excluding workers' compensation appeals. The circuit courts receive recommended orders from judicial officers who hear mental hygiene and juvenile matters.

West Virginia's 55 counties are divided into 31 circuits with 66 circuit judges. A map of West Virginia's judicial circuits is on page 11. The circuits range in size from one with seven judges to 11 with one judge. Although as few as one or as many as four counties comprise a circuit, each county has a courthouse where the 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 divorce, annulment, separate maintenance, paternity, grandparent visitation, and issues involving allocation of parental responsibility and family support proceedings, except those incidental to child abuse and neglect proceedings. Family court judges also hold final hearings in domestic violence civil proceedings. There are 35 family court judges who serve 26 family court circuits. Family court judges, who were previously appointed by the governor, were elected in partisan elections for the first time in 2002. Their initial terms are for six years. Subsequent terms will be for eight years.

## **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 31 circuits.

## **Juvenile System**

Among other duties, juvenile referees hold detention hearings when a child is arrested or taken into custody. West Virginia has two full-time and one part-time juvenile referees serving Kanawha, Cabell, and Wayne counties. In most counties, magistrates act as juvenile referees.

## **Magistrate Courts Trial Courts of Limited Jurisdiction**

There are 158 magistrates statewide, with at least two in every county and 10 in the largest county. 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 protective orders in cases involving domestic violence. 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 is appointed by the Court. Rory L. Perry II is the Supreme Court Clerk. Bruce A. Kayuha is the Chief Counsel. Circuit court clerks are elected in partisan elections in each county to six-year terms.

## **Administrative Office of the Courts**

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

## The Justices of the Supreme Court of Appeals



**Justice Joseph P. Albright** was elected to the Supreme Court of Appeals in November 2000, for a full 12-year term. He was born in Wood County, West Virginia, November 8, 1938. He married the late Patricia Ann Deem in 1958. They had four children, Terri Albright Cavi, Dr. Lettie Albright, Joseph P. Albright, Jr., and the late John Patrick Albright. In 1995, Justice Albright married the former Nancie Gensert Divvens. Mrs. Albright has three children, Susan Divvens Bowman, Sandy Divvens Fox, and Debbie Divvens Rake. Chief Justice Albright earned a Bachelor of Business Administration degree, cum laude, from the University of Notre Dame and his J.D. from the Notre Dame Law School. At Notre Dame Law School, he won the Webber Prize for Appellate Advocacy and was a member of the Notre Dame law review. Chief Justice Albright practiced law in Parkersburg and surrounding counties from 1962 until September 1995. In September 1995, Governor Gaston Caperton appointed him to an unexpired term on the Supreme Court of Appeals. He served through December 1996. After his former service on the Court, he resumed his practice in Parkersburg and Charleston. Since 1959, he has been an officer and director of Albright's of Belpre, Inc., a family corporation which owns and operates Belpre Furniture Galleries, a retail furniture business in Belpre, Ohio and Parkersburg. A former assistant prosecuting attorney of Wood County and former city attorney for the City of Parkersburg, Chief Justice Albright was elected to the West Virginia House of Delegates in 1970 and to six more terms commencing in 1974. He served as Chair of Education (1977-78), Chair of Judiciary (1979-84), and as 52nd Speaker of the House of Delegates in 1985 and 1986. He has served on a number of public and quasi-public boards and commissions, including the Parkersburg Charter Board from 1969-1970, when Parkersburg adopted a new city charter. He is a member of St. Francis Xavier Catholic Church in Parkersburg.



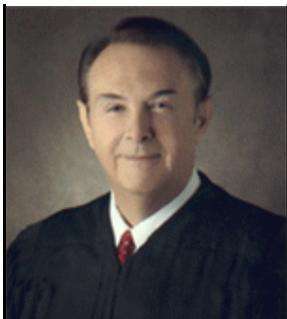
**Chief Justice Robin Jean Davis** was born in Boone County, West Virginia, April 6, 1956. She is married to Scott Segal and has a son, Oliver. She received her B.S. from West Virginia Wesleyan College in 1978, and her M.A. and J.D. from West Virginia University in 1982. She was engaged in the private practice of law from 1982 until 1996. Before her election to the Supreme Court of Appeals, she practiced law 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 1996. In 1996, she was elected to the Supreme Court of Appeals to an unexpired term. She was re-elected in November 2000. Justice Davis served as chief justice in 1998 and 2002. As chief justice, she accomplished a number of initiatives. These initiatives include: the Workers' Compensation Mediation Program; the expansion of parent education programs; Rules on Mass Litigation; the expansion of technology for the "Courtroom of the Future," including the video initial appearance pilot project; and the creation of the West Virginia Trial Court Rules. As chief justice, she also expanded the Supreme Court's outreach efforts by taking the Court for the first time in recent years to Wheeling and Charles Town, and leading the Court in the establishment of the LAWS program. In 2000, Justice Davis received the Distinguished West Virginian Award from Governor Cecil H. Underwood. 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"; and is the co-author with Louis J. Palmer, Jr. of "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 Justice Cleckley and Mr. Palmer of the *Litigation Handbook on West Virginia Rules of Civil Procedure*. Justice Davis is the most senior member of the Supreme Court of Appeals.



**Justice Larry V. Starcher** was born at home in Roane County, West Virginia, September 25, 1942. He is married to the former Rebecca Wiles and has three children, Mollianne, Victor, and Amy. Molli is a graduate of the WVU College of Law, Victor the WVU School of Medicine, and Amy the WVU Masters of Public Administration program. Justice Starcher earned his A.B. in 1964 and his J.D. in 1967 from West Virginia University. He served as an Assistant to the Vice-President for Off-Campus Education at West Virginia

University, as Director of the North Central West Virginia Legal Aid Society, and as a private lawyer. In 1976, he was elected Circuit Judge of Monongalia County. He served as circuit judge for 20 years, 18 of which he served as chief judge. While sitting as a circuit judge, Justice Starcher served as a special judge in 23 of West Virginia's 55 counties. He presided over the trial of 20,000 asbestos injury cases and a six-month state buildings asbestos trial. He held all offices in the West Virginia Judicial Association, including President in 1992-93. As a trial judge he was active in the area of juvenile justice, including establishing alternative learning centers for youths at risk and a youth shelter. He also pioneered the use of work-release and community service as punishment for nonviolent offenders. He has been a regular instructor at judicial conferences, and has been honored by many civic and community groups, including the NAACP, Jaycees, Trial Lawyers, and Probation Officers. In 1978, he was a Fellow of the National Endowment for the Humanities at Harvard University. Justice Starcher also has served as an Adjunct Lecturer at the West Virginia University College of Law from 1992 to the present. In November 1996, he was elected to the Supreme Court of Appeals. He served as chief justice in 1999 and 2003. As chief justice he promoted action in several areas of judicial administration, specifically: Court Facilities Committee; Public Trust and Confidence in the Judiciary; Mental Hygiene Commission; Court Technology Summit; Self-Represented Litigants Task Force; State Law Library improvements; and reactivated the Gender Fairness Task Force.



**Justice Elliott E. Maynard** was born in Mingo County, West Virginia. He earned his B.S. from Florida Southern College in 1967 and his J.D. from West Virginia University in 1974. He joined the United States Air Force in 1961, and was attached to a reconnaissance group during the Cuban Missile Crisis. Thereafter, he was assigned to the 306th Bomb Wing in the Strategic Air Command, and was honorably released in 1966. From 1968 to 1970, he was Managing Director of the Tug Valley Chamber of Commerce. He was engaged in the private practice of law from 1974 to 1981. In 1976, he was elected Prosecuting Attorney of Mingo County and was re-elected in 1980. In 1981, Governor John D. Rockefeller IV appointed him as Judge of the Thirtieth Judicial Circuit. He was twice elected judge of that circuit. He has been involved for over 30 years with the Boy Scouts of America and was District Chairman of the Mingo-Pike District and District Chairman of the Chief Cornstalk District. He has served on the Board of the Buckskin Council and received the

Silver Beaver Award, the highest volunteer award in scouting. Justice Maynard is a member of the American Judge's Association, the American Bar Association, the American Judicature Society, the West Virginia Bar Association, a former member of the National District Attorney's Association, and a member of the Charleston Rotary Club and other fraternal organizations. In November 1996, he was elected to the Supreme Court of Appeals. He previously served as chief justice in 2000 and 2004.



**Justice Brent D. Benjamin** is originally from Marietta, Ohio, but has made his home in Charleston for the past 23 years. He has been married to the former Janice Taylor for 23 years. They have five children, Paul, Mary, Laura, Amanda, and Evan. He and his family are members of Elizabeth United Methodist Church. Justice Benjamin is a graduate of The Ohio State University, from which he holds both a B.A. and J.D. Justice Benjamin was elected to the Supreme Court of Appeals in November 2004. Before his election, he was a principal attorney with Robinson and McElwee, PLLC in Charleston. His 20-year practice at that firm involved general civil litigation in state and federal courts, including toxic torts and complex litigation. His civil rights practice focused on protecting children from physical and sexual abuse. He formerly practiced in the United States Court of Appeals for the Fourth Circuit, the United States District Court for the Southern District of West Virginia, the Supreme Court of Appeals of West Virginia, and the Commonwealth of Kentucky Supreme Court. He is a 1999 graduate of Leadership West Virginia. He is also a current member of the Hocking College Archaeological Mission, and has participated in archaeological excavations in the United States and Egypt.



Pictured in the Court chambers are (seated from left to right) Justice Larry V. Starcher, Chief Justice Robin Jean Davis, Justice Elliott E. Maynard, and (standing from left) Justice Joseph P. Albright and Justice Brent D. Benjamin.

## Members of the Supreme Court of Appeals

Including the present members, there have been 73 justices of the Supreme Court of Appeals of West Virginia. Two justices have served twice. In 1863, the Supreme Court of Appeals consisted of three judges. Its membership was increased to four with the ratification of the West Virginia Constitution in 1872. On November 4, 1902, a constitutional amendment increased the number to the present five. The Judicial Reorganization Amendment of 1974 change the title of the members of the Supreme Court of Appeals from judges to justices. The longest single period of service on the Court was that of the late Judge Frank C. Haymond of Marion County, who served for nearly 27 years. Justice Margaret L. Workman is the first woman to serve on the Supreme Court of Appeals.

The following are former and present members of the Supreme Court of Appeals of West Virginia:

<b>NO.</b>	<b>NAME</b>	<b>COUNTY</b>	<b>POLITICAL</b>	<b>TERM OF SERVICE</b>
1.	Ralph L. Berkshire	Monongalia	Republican	1863-1866
2.	William A. Harrison	Harrison	Republican	1863-1868
3.	James H. Brown	Kanawha	Republican	1863-1870
4.	Edwin Maxwell	Harrison	Republican	1867-1872
5.	Ralph L. Berkshire	Monogalia	Republican	1869-1872***
6.	Charles P. T. Moore	Mason	Democrat	1871-1881
7.	John S. Huffman	Harrison	Democrat	1873-1875
8.	James Paull	Ohio	Democrat	1873-1875
9.	Alpheus F. Haymond	Marion	Democrat	1873-1882
10.	Matthew Edmiston	Lewis	Democrat	1876*
11.	Thomas C. Green	Jefferson	Democrat	1876-1889**
12.	Okey Johnson	Wood	Democrat	1877-1888
13.	James French Patton	Monroe	Democrat	1881-1882*
14.	Adam C. Snyder	Greenbrier	Democrat	1882-1890**
15.	Samuel Woods	Barbour	Democrat	1883-1888**
16.	Henry Brannon	Lewis	Dem. - Rep.	1889-1912
17.	John W. English	Mason	Democrat	1889-1900

18.	Daniel B. Lucas	Jefferson	Democrat	1890-1892**
19.	Homer A. Holt	Greenbrier	Democrat	1890-1896**
20.	Marmaduke H. Dent	Taylor	Democrat	1893-1904
21.	Henry C. McWhorter	Kanawha	Republican	1897-1908
22.	George Poffenbarger	Mason	Republican	1901-1922
23.	Warren Miller	Jackson	Republican	1903-1904*
24.	Frank Cox	Monongalia	Republican	1905-1907
25.	Joseph M. Sanders	Mercer	Republican	1905-1907
26.	William N. Miller	Wood	Republican	1907-1928**
27.	Ira E. Robinson	Taylor	Republican	1907-1915**
28.	L. Judson Williams	Greenbrier	Republican	1909-1920
29.	Charles W. Lynch	Harrison	Republican	1913-1921
30.	John W. Mason	Marion	Republican	1915-1916*
31.	Harold A. Ritz	Mercer	Republican	1917-1922
32.	Frank Lively	Kanawha	Republican	1921-1932
33.	James A. Meredith	Marion	Republican	1922-1924*
34.	William H. McGinnis	Raleigh	Republican	1923-1924
35.	M.O. Litz	McDowell	Democrat	1923-1936**
36.	John H. Hatcher	Raleigh	Republican	1924-1940
37.	Homer B. Woods	Ritchie	Republican	1925-1936
38.	Haymond Maxwell	Harrison	Republican	1928-1940**
39.	Jo N. Kenna	Kanawha	Democrat	1933-1950
40.	Fred L. Fox	Braxton	Democrat	1937-1952
41.	James B. Riley	Ohio	Democrat	1937-1958
42.	Herschel H. Rose	Marion	Democrat	1941-1945
43.	William T. Lovins	Cabell	Democrat	1941-1957
44.	Frank C. Haymond	Marion	Democrat	1945-1972**
45.	Leslie E. Given	Kanawha	Democrat	1950-1962**
46.	Chauncey Browning	Logan	Democrat	1952-1971**
47.	Henry L. Ducker	Cabell	Democrat	1957-1958*

48.	Robert T. Donley	Monongalia	Republican	1958*
49.	Thornton G. Berry, Jr.	McDowell	Democrat	1958-1976
50.	Harlan M. Calhoun	Hardy	Democrat	1958-1972
51.	Fred H. Caplan	Harrison	Democrat	1962-1980**
52.	John E. Carrigan	Marshall	Republican	1971-1972*
53.	Charles H. Haden, II	Monongalia	Republican	1972-1975**
54.	Oliver D. Kessel	Jackson	Republican	1972*
55.	James M. Sprouse	Monroe	Democrat	1973-1975
56.	Richard Neely	Marion	Democrat	1973-1995
57.	Edwin F. Flowers	Hancock	Republican	1975-1976*
58.	Donald R. Wilson	Jackson	Republican	1976*
59.	Sam R. Harshbarger	Cabell	Democrat	1977-1984
60.	Thomas B. Miller	Ohio	Democrat	1977-1994
61.	Darrell V. McGraw, Jr.	Wyoming	Democrat	1977-1988
62.	Thomas E. McHugh	Kanawha	Democrat	1981-1997
63.	W. T. Brotherton, Jr.	Kanawha	Democrat	1985-1995
64.	Margaret L. Workman	Kanawha	Democrat	1989-1999
65.	Franklin D. Cleckley	Monongalia	Democrat	1994-1996*
66.	Arthur M. Recht	Ohio	Democrat	1994-1996*
67.	Joseph P. Albright	Wood	Democrat	1995-1996*****
68.	Robin J. Davis	Kanawha	Democrat	1996-Present
69.	Larry V. Starcher	Monongalia	Democrat	1997-Present
70.	Elliott E. Maynard	Mingo	Democrat	1997-Present
71.	John F. McCuskey	Kanawha	Republican	1998*
72.	Warren R. McGraw	Wyoming	Democrat	1998-2004
73.	George M. Scott	Roane	Republican	1999-2000*
74.	Joseph P. Albright	Wood	Democrat	2001-Present
75.	Brent D. Benjamin	Kanawha	Republican	2005-Present

\* Appointed to unexpired term.    \*\* Appointed, then elected.  
\*\*\* Elected, then re-appointed    \*\*\*\*\* Appointed, then later elected.



## The Court Chambers

The Court chambers are located on the third floor of the east wing of the West Virginia Capitol. The east wing was erected between July 1926 and December 1927. The chambers are impressive, measuring 40 x 44 feet with a 30-foot ceiling.

Above the chambers is a rectangular opening 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 chambers are two quotes. The first quote by Thomas Jefferson 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 quote by Abraham Lincoln is, “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 the sides of the chambers, and the compressed cork floor is covered with dark red carpet. The furnishings are made of American walnut.

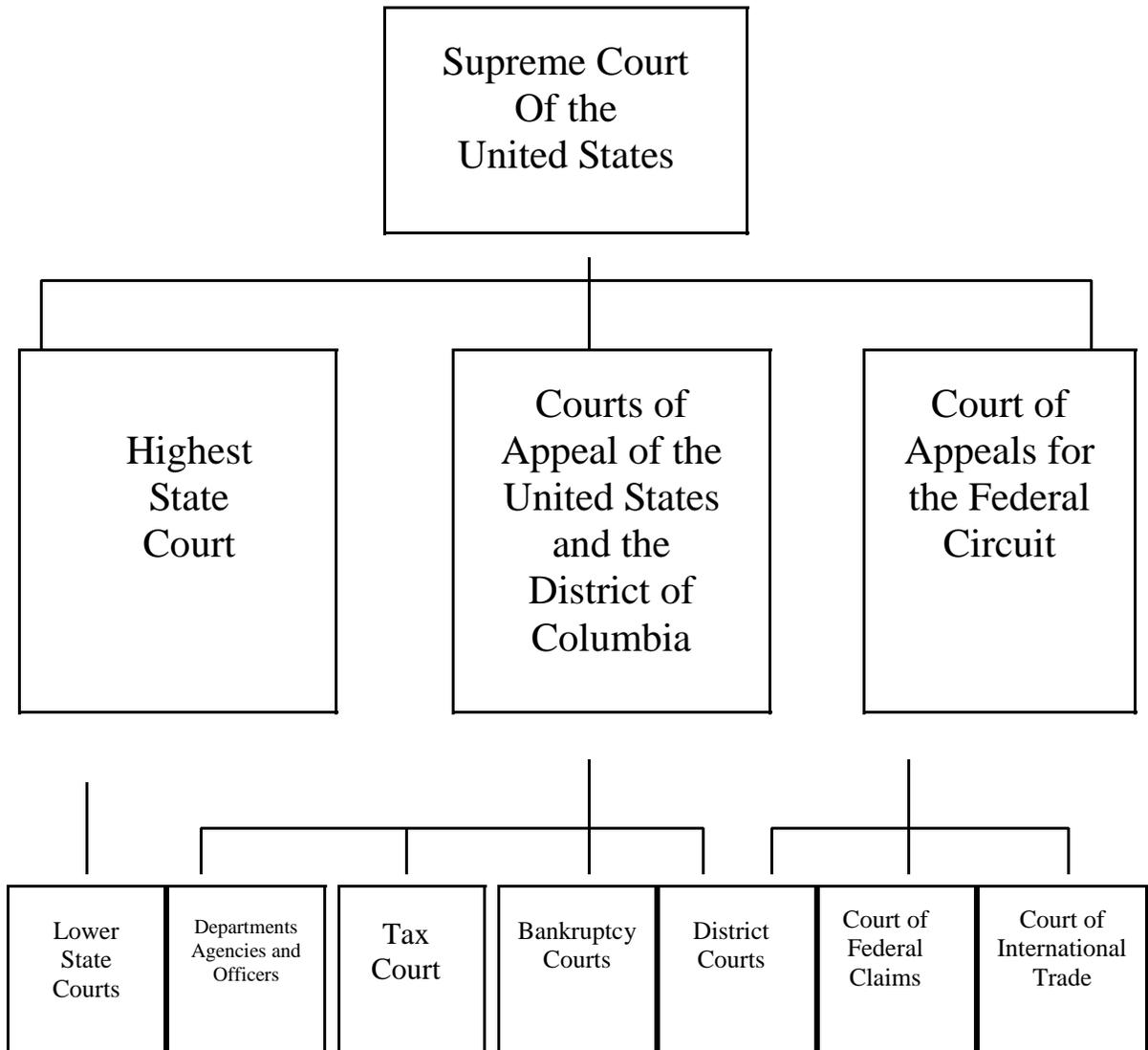
New York City architect Cass Gilbert designed the Court chambers as well as the original West Virginia Capitol. At the time of his commission, Gilbert was a nationally renowned architect who had designed the capitol buildings of Minnesota and Arkansas, and the Woolworth building in New York City, once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

Gilbert took great care in planning the Court chambers, personally designing the decor, the bench, and other furnishings. Gilbert did not include a bar because he wanted to symbolize that there shall be nothing between West Virginia’s highest

court and her citizens. After completing West Virginia's chambers, Gilbert designed the chambers of the Supreme Court of the United States, which was his final achievement before his death. Gilbert used West Virginia's chambers as a model for the chambers in the Supreme Court of the United States.

## Organization of the Federal Court System

The federal judicial branch of government is composed of the federal courts. The Supreme Court of the United States is the highest court in the federal system and has the last word on issues of federal law and the federal Constitution. The courts just below the U.S. Supreme Court, the intermediate federal courts, are known as circuit courts of appeal. There are 13 federal circuit courts in the United States. West Virginia is within the jurisdiction of the Fourth Circuit Court of Appeals. Therefore, federal cases originating in West Virginia are appealed to the Fourth Circuit of Appeals. The federal trial court in which federal lawsuits originate is the federal district court. West Virginia is divided into two federal districts-northern and southern. Federal courts may constitutionally hear only two types of cases: 1) cases involving a federal question; and 2) cases involving citizens of two different states when the amount in dispute is greater than \$75,000.



## Glossary of Legal Terms

### A

**acquit** - To find a defendant not guilty in a criminal trial.

**adjudication** - A judgment or decision of a court or jury regarding a case.

**admission** - A voluntary acknowledgement of some fact(s) needed, along with proof of other facts, to establish guilt, but short of a confession of guilt, because not acknowledging all facts or elements of a charge (compare “confession”).

**affidavit** - A written or printed declaration or statement under oath.

**affirm** - The ruling of an appellate court that the judgment of a lower court is correct and should stand.

**allegation** - An assertion, declaration or positive statement by a party to an action made in a pleading which states what he or she expects to prove.

**answer** - The defendant’s written response to allegations in the case.

**appeal** - Review of a case by a higher court.

**appearance** - A coming into the court in person or by filing a paper, as plaintiff, defendant, or legal representative.

**appellant** - Party appealing a decision or judgment to a higher court.

**appellate court** - A court having jurisdiction to review the judgment or order of a lower court.

**appellee** - A party against whom an appeal is taken.

**arbitration** - The hearing and settlement of a dispute between opposing parties by a third party whose decision the parties have agreed to accept.

**arraignment** - A court hearing in a criminal case where a defendant is advised of the charges and asked to plead guilty or not guilty. Most arraignments in West Virginia are held in magistrate court.

**attorney of record** - An attorney who represents a party and has entered an appearance in an action (see “counsel”).

### B

**bail bond** - An agreement by a third party to pay a certain sum of money if the defendant fails to appear in court.

**bailiff** - A court official who maintains courtroom order and jury custody.

**battery** - An unlawful application of physical force to, or offensive touching of, another without his or her consent.

**bench conference** - A meeting either on or off the record at the judge’s bench between the judge, counsel and sometimes the defendant, out of the hearing of the jury.

**bench trial** - Trial held before a judge sitting without a jury; jury waived trial.

**bench warrant** - Process issued by the court or “from the bench” for the attachment or arrest of a person.

**bifurcate** - To try issues separately, such as guilt and criminal responsibility in a criminal proceeding or liability and damages in a civil action.

**binding over** - The act by which a court or magistrate requires a person to enter into a recognizance or furnish bail to appear for trial, to keep the peace, to attend as a witness, etc.

Also describes act of lower court in transferring case to higher court or to grand jury after a finding or probable cause to believe that defendant committed crime.

**brief** - A legal document, prepared by an attorney, which presents the law and facts supporting his or her client.

**burden of proof** - The necessity of proving facts at issue. In West Virginia, the criminal burden of proof is “beyond a reasonable doubt.” The civil burden of proof is “by a preponderance of the evidence.”

## C

**case** - Any proceeding, action, cause, suit, lawsuit, or controversy initiated through the court system by filing a complaint, petition, or indictment.

**case law** - Decisions of federal and state courts interpreting and applying laws in specific fact situations. Opinions are reported in various court reporting volumes.

**caseload** - The number of cases a judge handles.

**cause of action** - A legal claim.

**certiorari** - A procedure for removing a case from a lower court to a higher court for review.

**chain of custody** - An accounting for the continuous possession of evidence, such as narcotics in a drug trial, to ensure no substitution, tampering, or improper handling affects the credibility of the evidence.

**change of venue** - Moving a case from one court, or location, to another.

**charge to the jury** - A judge’s instructions to the jury regarding the laws pertaining to the case.

**charging document** - A written accusation alleging a defendant has committed an offense includes a citation, an indictment, information, and statement of charges.

**circuit** - A geographical court jurisdiction composed of one or more counties. West Virginia’s 55 counties are divided into 31 circuits.

**citation** - A charging document, other than an indictment, information, or statement of charges, that is issued to a defendant by a peace officer or other person authorized by law to do so.

**civil law** - All law that is not criminal law.

**closing argument** - A summary of the evidence presented to the jury by the attorneys.

**code** - A collection of laws promulgated by legislative authority. West Virginia laws are published in the West Virginia Code.

**commitment order** - A court order directing that an individual be kept in custody, usually in a penal or mental facility.

**common law** - A system of jurisprudence based on precedent rather than statutory laws.

**commutation** - Change of punishment from a greater to a lesser degree or ending a sentence that has been partially served.

**complaint** - A civil lawsuit, filed in the magistrate or circuit courts.

**concurrent jurisdiction** - Jurisdiction held by two courts over the same type of case (compare “exclusive jurisdiction”).

**confession** - A statement by an individual, either oral or written, admitting that he or she committed a certain offense (compare “admission”).

**contempt (civil)** - Noncompliance with a court order or rule that affects another person and that

is punished to compel compliance.

**contempt (criminal)** - An act or omission that obstructs the orderly administration of justice or impairs the dignity, respect, or authority of the court and that is punished to vindicate the honor of the court.

**continuance** - A postponement or delay in a court proceeding granted by a court on either oral or written motion.

**costs** - Fees and charges required by law to be paid to the court, the amount of which is set by statute or court rule or by an administrator authorized by law to do so.

**count** - A separate charge in a charging document or separate cause of action in a civil complaint.

**corpus delicti** - The body or material substance upon which crime has been committed; e.g., the corpse of a murdered person or the charred remains of a burned house.

**court of last resort** - Highest appellate court. The Supreme Court of Appeals is West Virginia's court of last resort.

**criminal case** - A criminal lawsuit with the State of West Virginia versus the defendant.

**cross-examination** - Questioning of a witness by the opposing side.

## **D**

**de novo** - "Anew." A trial de novo is a completely new trial.

**declaratory judgment** - A judgment declaring the rights of the parties on a question of law.

**decree** - Decision or order of the court. A final decree completes the suit; an interlocutory decree is provisional or preliminary.

**default judgment** - Under the West Virginia Rules of Civil Procedure, when a party against whom a judgment for affirmative relief is sought has failed to plead (i.e., answer) or otherwise defend, he or she is in default and a judgment by default may be entered either by the clerk or the court.

**defendant** - A person charged with a crime or a person against whom a civil action is brought.

**deliberations** - Jury discussions and consideration of the facts presented during the trial prior to reaching a decision.

**deposition** - Sworn testimony taken outside the courtroom according to the rules of the court.

**detainer** - A notice, usually a warrant, that an inmate is wanted to face charges in another jurisdiction.

**direct examination** - The first questioning of a witness by the party on whose behalf he or she is called.

**discovery** - A pretrial proceeding where a party to an action may be informed of the facts known by other parties or witnesses.

**discretionary** - A type of appellate jurisdiction. The West Virginia Supreme Court of Appeals has "discretionary" jurisdiction because it may choose to hear an appeal or may refuse to hear it.

**docket number** - The designation assigned to each case filed in a particular court. The docket number also is known as the case number.

**docket** - Book containing entries of all proceedings in a court.

**double jeopardy** - Prohibition against more than one prosecution for the same crime.

**due process** - Constitutional guarantee that an accused person receives a fair and impartial trial.

## E

**en banc** - “On the bench.” All judges of a court sitting together to hear a case.

**enjoin** - To require a person to perform or to abstain or desist from some act.

**et al.** - “And others.”

**evanescent evidence** - Evidence which can disappear relatively quickly, such as the amount of alcohol in a person’s blood.

**evidence** - Any legally presented proof which may be established by witnesses, testimony, records, documents, etc.

**exculpatory evidence** - Evidence which tends to indicate that a defendant did not commit the crime alleged.

**exhibit** - Paper, document, or other object received by the court and offered as evidence during a trial or hearing.

**ex parte** - A proceeding brought for the benefit of one party only without notice to or challenge by an adverse party.

**exception** - A formal objection to an action of a court during trial, evidencing an objecting party’s disagreement with the court’s ruling and preserving the matter for review on appeal.

**exclusive jurisdiction** - Jurisdiction held by only one court over the type of case (compare “concurrent jurisdiction”).

**expungement** - The effective removal from public inspection of police or court records.

**extradition** - The formal process of delivering an individual apprehended in one jurisdiction (e.g., a state or country) to the authorities of another jurisdiction in which that individual has been accused or convicted of a crime.

## F

**felony** - The most serious of two categories to which criminal offense are assigned. The minimum sentence is one year (compare “misdemeanor”).

**felony-murder** - A murder committed during the commission of a felony such as robbery, burglary, or kidnapping.

**forfeiture** - The loss of money or property resulting from failure to meet a legal obligation or from the illegal nature or use of the money or property.

## G

**grand jury** - A panel of citizens sworn to inquire into crime and if appropriate bring accusations, or indictments, against the suspects.

**guardian ad litem** - A person appointed by a court to manage the interests of a minor or incompetent person whose property is involved in litigation.

## H

**habeas corpus** - “You have the body.” A writ of habeas corpus requires that a person be brought before a judge. It is usually used to direct an official to produce a prisoner so the court

may determine if liberty has been denied without due process. An original jurisdiction petition for relief from unconstitutional confinement used mainly by inmates, but occasionally in child custody cases.

**hearsay** - Evidence offered by a witness based on what others have said.

**home monitoring** - An alternative to incarceration where an individual is confined to his or her home and monitored electronically.

**hung jury** - A jury that is unable to agree on a verdict after a suitable period of deliberation.

## I

**immunity from prosecution** - Protection from prosecution in exchange for testimony that might not otherwise be forthcoming.

**impeach** - To discredit a person or thing, especially by showing that a witness is not telling the truth.

**in camera** - In chambers; in private.

**incarcerate** - To confine to a jail or correctional institution.

**incompetency** - Lack of capacity to understand the nature and object of the proceedings, to consult with counsel, and to assist in preparing a defense.

**indictment** - Written accusation of a grand jury charging a crime.

**indigent** - Unable by reason of poverty or insufficient financial means to pay.

**information** - A charging document presented by a prosecuting attorney, instead of a grand jury, and filed in a circuit court.

**initial appearance** - The first appearance of a defendant before a judicial officer by reason of execution of a warrant or before the court, in person or by an attorney, in response to a summons.

**injunction** - Court orders prohibiting specific actions from being carried out.

**insanity plea** - A claim by a defendant that he or she lacks the soundness of mind required by law to accept responsibility for a criminal act.

**instruction** - Direction given by a judge to the jury regarding the law in a case.

**interrogatories** - Written questions which must be answered under oath.

## J

**jointly and severally** - Acting together and separately; anyone so liable can sue or be sued with or without others joining in the action.

**judge** - An elected public official with authority to hear and decide cases in a court of law

**judgment** - Final determination by a court.

**judgment document** - Document that explains the sentence an offender receives from a trial court.

**judicial notice** - A court's recognition of the truth of basic facts without formal evidence.

**jurisprudence** - The science of law.

**jury** - People selected as prescribed by law to render a decision (verdict) in a trial. In a West Virginia criminal circuit court trial there are twelve jurors. In a civil circuit court trial there are six jurors.

**juvenile waiver** - A procedure by which a charge (s) against a minor is transferred from a juvenile to circuit court (compare “reverse waiver”).

## **L**

**law** - Rules and principles of conduct supported by the legislature, court decisions, or local customs.

**lesser included offense** - A crime composed of some, but not all, of the elements of a greater crime; commission of the greater crime automatically includes commission of the lesser included offense.

**limited jurisdiction** - Courts limited in the types of cases they may hear. For example, family courts are courts of limited jurisdiction.

**litigant** - Person or group engaged in a lawsuit.

**litigation** - A contest in court.

## **M**

**mandamus** - A type of original jurisdiction petition; an order of a superior court requiring a public body, inferior court, or public official to perform a required duty.

**mandatory jurisdiction** - A court must hear and respond to those appeals that are “mandatory” under the state’s constitution or by statute.

**memorandum order** - A series of short orders in one document. For example, the West Virginia Supreme Court of Appeals issues most of its workers’ compensation decisions by memorandum order.

**mens rea** - Criminal intent.

**merger** - Incorporation of a lesser crime into a greater crime.

**misdemeanor** - The less serious of two categories to which criminal offenses are assigned (compare “felony”).

**mistrial** - A trial that has been terminated and declared void due to prejudicial error in the proceedings or other extraordinary circumstances.

**mitigation** - Circumstances suggesting that a lesser sentence is appropriate.

**mitigating circumstances** - Do not justify or excuse an offense, but may be considered as reasons for reducing the degree of blame.

**moot** - *Adjective*: No longer presenting a controversy capable of adjudication because the issue has ceased to exist and is unlikely to recur.

**motion** - Oral or written request before, during, or after a trial on which a court issues a ruling or order.

## **N**

**negligence** - The absence of ordinary care.

**nolo contendere** - Latin phrase meaning “I will not contest it.” A plea in a criminal case which has a similar legal effect as pleading guilty. A defendant may plead nolo contendere only with the consent of the court.

## O

**oath** - A written or oral pledge to keep a promise to speak the truth.

**objection** - A statement by an attorney opposing a specific testimony or admission of evidence.

**opening statement** - Outline of anticipated proof presented to the jury by the attorneys at the trial's beginning.

**opinion** - The written decision of a court. The West Virginia Constitution requires that Supreme Court opinions "shall be concisely stated in writing and preserved with the record; and it shall...prepare a syllabus of the points adjudicated in each case in which an opinion is written and in which a majority of the justices concurred, which shall be prefixed to the published report of the case." W.Va. Const., Article 8, Section 4.

**original jurisdiction** - A case heard by the court in which it is first filed; the opposite of appellate jurisdiction.

**overrule** - Court's denial of a motion or objection raised to the court. When a court overrules an objection to evidence (for example, testimony), the jury may properly consider it.

## P

**parole** - The conditional and revocable release of an inmate by the Parole Board to parole supervision.

**parties** - Persons, corporations, or associations which have brought a lawsuit or are defendants in a trial.

**plaintiff** - In a civil case, the person who files a claim against another person or, in a criminal case, the State of West Virginia.

**per curiam opinion** - An opinion by the whole court, as opposed to one authored by just one justice because the court is not deciding any new issues of law. Per curiam opinions of the Supreme Court of Appeals may be cited as support for a legal argument.

**peremptory challenge** - Procedure for rejecting prospective jurors without a reason. Each side is permitted a limited number of peremptory challenges.

**personal recognizance** - A guarantee of a defendant's appearance in court ( a.k.a. own recognizance) based solely on his or her signed promise (no bail bond required).

**petition** - A party to a legal action who wishes to appeal the decision of a lower tribunal must file a petition for appeal with the Supreme Court of Appeals. Under its discretionary jurisdiction, the Court may grant, accept, or refuse the petition for appeal. The Court may accept the petition, which means that the petitioner must present an oral argument before the Court grants the petition, or the Court may grant the petition based on the briefs. If the Court refuses the petition, the Court issues an order notifying the parties. The order does not state the reason why the petition was refused.

**petit jury** - An ordinary jury for the trial of an action.

**plea** - An answer to a criminal charge including: not guilty, guilty, nolo contendere, not criminally responsible by reason of insanity.

**poll the jury** - A procedure by which jurors are asked individually to disclose their agreement with the announced verdict to ensure unanimity.

**post conviction** - A procedure by which a convicted defendant challenges the conviction and/or sentence on the basis of some alleged violation or error.

**power of attorney** - Document authorizing another to act as one's agent or attorney in fact (not an attorney at law).

**preliminary hearing** - A hearing held in the circuit court, unless waived by the defendant, to determine whether there is probable cause to believe the defendant committed an offense(s). Available when the offense(s) charged is not within the exclusive jurisdiction of the circuit court.

**presumption** - An inference of the truth or falsity of a proposition or fact, that stands until rebutted by evidence to the contrary.

**prima facie** - Translated "on the first appearance"; sufficient on its face to prevail until contradicted.

**privilege** - A person's right not to testify on a matter or communication protected by law.

**probable cause** - Reasonable belief that a crime has been committed; the basis for all lawful searches.

**probate** - The legal process of establishing the validity of a will and settling an estate.

**probation** - A sentence of confinement which is suspended upon a term of probation supervision. It may include community service or restitution or both. Probation must automatically be considered if the defendant is eligible.

**pro bono** - Legal services provided without attorney fees.

**procedural law** - The method, established normally by rules, to be followed in a case; the formal steps in a judicial proceeding.

**proffer** - An offer of proof as to what the evidence would be if a witness were called to testify or answer a question.

**prohibition** - An order issued by a court of superior jurisdiction to halt the performance of a particular act by an inferior court, state agency, or public official.

**pro se** - Legal representation of oneself.

**prosecution** - Act of pursuing a lawsuit or criminal trial; the prosecution in a criminal case is brought by the state through the prosecutor.

**prosecutor** - Public official who performs the function of trial lawyer for the state.

**pro tem** - "Temporary."

## Q

**quash** - To set aside or to make void; with respect to process, such as a summons or subpoena, to void on motion of the person served.

## R

**rebuttal** - The act of contradicting or overcoming the effect of a presumption of evidence.

**recall** - Cancellation by a court of a warrant before its execution by the arrest of a defendant; also, a process by which a retired judge may be asked to sit on a particular case.

**recess** - A short interval during which a court suspends business, but without adjourning.

**redirect examination** - Follows cross-examination and is exercised by that party who first examined the witness.

**remand** - To send back.

**res judicata** - The matter already has been finally decided; a rule against relitigation of issues.

**restitution to victim** - An amount of money the court requires the defendant to pay the victim of a crime.

## S

**sentence, concurrent** - Two or more sentences which run at the same time.

**sentence, consecutive** - Two or more sentences which run one after another.

**sentence, determinate** - A sentence that states exactly the time to be served or money to be paid.

**sequester** - To separate or isolate; for example, to separate witnesses from each other, to isolate jurors from the public, to separate property from a party and place it in the custody of the court or a third person.

**sequester a jury** - To place members of a jury into 24 hour a day seclusion until a verdict is reached.

**settlement conference** - A meeting between parties of a lawsuit, their attorneys and a judge to attempt a resolution of the dispute without a trial.

**show cause** - An order requiring a person to appear in court and present reasons why a certain order, judgment, or decree should not be issued.

**speedy trial** - The right of an accused to a speedy trial as guaranteed by the Sixth Amendment of the United States Constitution; in West Virginia the right to be tried within days after initial appearance, unless waived.

**statute** - A law created by the legislature.

**stay** - Halting a judicial proceeding by order of the court.

**stipulation** - An agreement between counsel on certain facts so those facts need not be proven, or on an issue so that the issue need not be litigated.

**striking a jury** - Process of selecting a trial jury where attorneys “strike” or excuse jurors until the number required remains.

**sua sponte** - Translated from Latin, “of its own will”; commonly used when a judge does something in a case without being asked to do so by a party.

**subpoena** - A written legal notice requiring a person to appear in court and give testimony or produce documentary evidence.

**subpoena duces tecum** - “Under penalty you shall take it with you.” A process by which the court commands a witness to produce specific documents or records in a trial.

**summons** - A writ notifying the person named that an action has been filed against the person: 1) in a criminal action, failure to appear may result in a bench warrant being issued for the person’s arrest; 2) in a civil action, failure to answer may result in entry of a judgment against that person.

**suppress** - To stop, prohibit, prevent, subdue; with respect to evidence, to prevent its use by showing it was obtained illegally or is irrelevant.

**sustain** - Court’s acceptance of any motion or objection; when a court sustains an objection to evidence (for example, testimony), the jury may not consider it.

## T

**tort** - An injury or wrong committed with or without force to the person or property of another giving rise to a claim for damages.

## V

**venue** - The specific county, city, or geographical area in which a court has jurisdiction.

**verdict** - The final formal trial decision made by a jury, read before the court, and accepted by the judge.

**victim impact statement** - A statement during sentencing which informs the sentencer of the impact of the crime on the victim or the victim's family.

**voir dire** - (pronounced "vwar-deer") - "To speak the truth." The process of preliminary examination of prospective jurors regarding their qualifications.

## W

**waive** - Relinquish. In West Virginia, used commonly to refer to the giving up of a legal right voluntarily, intentionally, and with full knowledge of the consequences.

**witness** - A person subpoenaed to testify under oath who possesses factual knowledge about the case.

**writ** - A written court order directing a person to perform or refrain from performing a specific act. See certiorari, habeas corpus, mandamus, and prohibition.