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Maynard, Justice, concurring: **November 30, 2001**
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OF WEST VIRGINIA

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I completely concur in this case. After viewing the videotape of Ms. Choma wherein she was advised of her rights and administered an intoxilyzer test, it is readily apparent to me that she should never have been charged or arrested in the first place. The intoxilyzer results show a blood alcohol of .305, but, oddly, the videotape clearly and plainly shows a woman in full possession of her faculties; although she is upset, crying and visibly distraught, she certainly appears sober. Her speech is not slurred, her responses to questions and her general conversation are reasoned and appropriate, she is well oriented to time and place, and her physical movements evidence a complete absence of any impairment. She is seen several times rising from a chair, walking away into another room to use the telephone or rest room, walking back and sitting down again. She never staggers, stumbles, hesitates, or falls. All of her movements are quick, positive, and steady. When she repeatedly raises her arm to drink water, she does not tremble and her arm and hand are steady as a rock. A person with a .305 blood alcohol level would have been in a stupor, or at least would have been staggering and unsteady.

The videotape in this case proves the cliché that one picture is worth a thousand words. However, I am compelled to add a few more to the thousands of words already wasted in this case. Ms. Choma was unfairly subjected to an ordeal that was simply dreadful. She was arrested and subjected to a trial, and after her acquittal, the system threw salt in the wound by further imposing penalties in an

administrative proceeding. I hope Syllabus Point 3 of the majority opinion will help solve a problem which exists in West Virginia today wherein citizens are subjected to additional punishment even after they have been found innocent of crimes for which they were wrongfully charged.

For the foregoing reasons, I concur with the majority in this case.