

2014 State of the Courts
Chief Justice Thomas A. Balmer
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Introduction

Thank you for that kind introduction. It is again my privilege to be here at the Salem City Club to present my second State of the Courts address. I would like to begin by thanking the Salem City Club and the Marion County Bar Association for co-hosting this event.

I would like to recognize and thank my judicial colleagues who are joining us today – including my fellow Supreme Court justices, and our Circuit Court judges.

Finally, I would like to thank the judges and staff of the Oregon judicial branch for the tremendous work they do every day in every corner of the state to serve the cause of justice and the people of Oregon. Their work is incredibly important, and often difficult, and they perform their duties remarkably well.

Thoughts as Chief Justice

This is my second State of the Court speech as Chief Justice, and I wanted to avoid the dreaded ‘sophomore slump,’ so I thought I’d borrow from John Roberts, the Chief Justice of the United States, whose year-end state of the judiciary message just came out. I assumed that Justice Roberts with his impressive intellect and style, plus an experienced speech-writing team would provide some high-minded and inspirational rhetoric about the rule of law in a free society — or perhaps some creative new initiative to improve our justice system. I was looking for something that I could steal— I mean borrow -- for my talk. Unfortunately, his speech begins with the following, “I would like to choose a fresher topic, but duty calls. The budget remains the single most important issue facing the courts.” It sounds like he was copying from my state of the courts speech last year!

So, I’ve lowered the bar — I’m not proposing bold new programs or offering inspirational words today. I’m going to talk instead (at least mostly) about the nitty gritty of operating the court system that Oregonians deserve, including the need for funding that system. But, as you will see, we do have new initiatives that we are proud of, and, in fact, although we are woefully underfunded compared to Chief Justice Roberts and the federal court system, things are improving for us.

I have now spent a full year as Chief Justice – with my first legislative session and my first experience shepherding the Chief Justice’s budget through the legislative process – and I have the wounds to show for that. I also now have a better understanding of a comment former Governor and Supreme Court Justice Ted Kulongoski made to me after he won the governor’s race in 2002 and got his first look at the revenue projections after the internet bubble burst and the post-9/11 recession set in. He asked rhetorically whether the winner of a race could ask for a recount.

Last year, when I was a rookie chief justice, I talked about still learning about Chief Justice Orders and all the ins and outs of being the administrative head of one of the three branches of state government. That education is still underway, but let's just say I have a greater appreciation of the skill and grace with which previous Chief Justices in Oregon and elsewhere have performed their duties.

Instead of Chief Justice Orders, today I wanted to briefly mention an important, but overlooked, accomplishment of the Supreme Court last year – we completed the first comprehensive overhaul of Oregon's Code of Judicial Conduct in more than two decades. Like much of the work of all Oregon's courts, this is not something sexy or particularly newsworthy in and of itself, but is exceedingly important. In the last 20 years there have been many changes in case law and court culture – especially around free speech issues for judges and its impact on judicial elections – and we needed to update our Code of Conduct to define how Oregon will treat these issues. We have been very fortunate to avoid the partisan, highly-political, mud-slinging judicial elections that are plaguing some other states, and updating this code is an important way to keep our Oregon traditions intact.

I would like to thank the many judges and others, including our current Attorney General Ellen Rosenblum and our senior staff attorney Phil Schradle, for their work in developing this revised code, and for the thoughtful effort that the members of the Court — particular Justice Dave Brewer, who led the final phase of this effort — brought to working through and approving this re-write.

State of the Courts

So now, on to the State of the Courts. Last year, I told you the state of our courts was “stressed.” Today, I am pleased to report that the state of our courts – of your courts -- is “improving.”

Last year I reported that the courts had reduced staff levels by 15 percent because of budget limitations, and how our ability to provide timely justice to Oregonians throughout the state had suffered because of that.

The 2013 Legislature took advantage of the somewhat improved economy and approved restorations in several important areas of our budget – in fact, we had a better session than we expected.

This did not come about magically. As a matter of fact, I was an advocate for 24 years before I even became a judge, and I have never worked harder as an advocate than I did as an advocate for adequate court funding. Fortunately, I had a lot of help. We had – for the first time – an informal ‘courts caucus’ of legislators who wanted to voice their support for the courts and talk to their colleagues about the importance of funding the courts. We had a lawyer, Senator Peter Courtney, as President of the Senate. In addition, we had a courts coalition comprised of the Oregon State Bar, respected political leaders from Dave Frohnmayer to Barbara Roberts to Ted Kulongoski, leaders of the business community, the League of Women Voters, Legal Aid, and

others — all supporting our budget. It is quite a list, and one that I want to keep building as we continue to work to restore services lost over the past five years.

We still have important holes to fill, and don't have resources for many innovative things we would like to do, but here's how the cause of justice was helped by the legislature . . .

- Courts are now open every business day – the legislature gave us funding to eliminate the full-day furlough closures we experienced from 2011 to mid-2013. We still are not able to be open at all times during every business day in every court location, but we have taken an important step forward in providing access to justice.
- The legislature restored some positions that were cut over the last two budget periods, so we can start building back the services we have been missing and decrease the time it takes to get cases decided and judgments entered.
- We were able to get modest cost-of-living and salary increases for judges and for staff.
- The legislature granted continued funding for about a dozen treatment courts, including two here in Marion County. For those of you who don't know, Marion County has often taken the lead in creating, promoting, and refining a variety of treatment-based courts – from adult drug courts, to a family drug court associated with Family Building Blocks, and the new veterans' treatment court.
- The legislature provided funding for the new three-judge panel in the Court of Appeals that it established in statute in 2012, but had not yet funded. The three new judges for that court are already at work and will provide more resources for what is known as the busiest intermediate appellate court in the country.
- We were able to get some significant infrastructure funding. First, we will be able to secure the cornices and make other critical improvements to our century-old Supreme Court Building, to ensure that the oldest building on the Capitol Mall remains an enduring symbol of justice in our state. [I might add that we are having a party at the courthouse on February 14 of this year to celebrate the 100th anniversary of the first time that the Supreme Court convened in that building. It's at 3 p.m., and you're all invited.] Second, we secured direct state funding to help replace the Union County courthouse – which for three decades had been “temporarily” housed in an old hospital. Third – and perhaps most importantly – the legislature provided money and access to state bonds to help counties replace unsafe and insufficient courthouses throughout the state – beginning with the downtown courthouse in Multnomah County. The legislature agreed that if a county needs to replace or renovate an unsafe or inadequate courthouse, the legislature will provide help with matching funds. It is an important outreach by the state to the counties for those vital facilities.
- And the last major element of our legislatively-approved budget is that we received funding to continue implementing Oregon eCourt in another 14 courts. That funding

includes flipping the switch in our largest court – Multnomah – in May of this year, and in Marion County Circuit Court in just 11 months.

eCourt Status

I mentioned the amount of work it took to achieve this budget, and now want to spend a few moments on the last item I mentioned – the Oregon eCourt Program. (As I warned you earlier, this is not sexy or fun — just the nitty-gritty, but it is important.)

Oregon eCourt is another court program that has benefitted from an immense amount of hard work over many years, and it does deserve some additional discussion here because of the recent publicity about failed state-sponsored information technology projects, and also because your local court should have the Odyssey system up and running at this time next year.

Articles about failed government IT projects – state and federal -- are the norm (some might say ‘all the rage’). In October or November of last year, all any speaker had to do to get a knowing laugh out of a crowd was to mention healthcare.gov. So let me offer my perspective about the court’s technology project, which has had its share of ups and downs but right now is on schedule and on budget, and is working in Oregon’s appellate courts and eight trial courts across the state.

As befits this forum, I want to touch on both the pros and the cons -- I know that this audience is not looking for easy sound bites or cheery, quick fixes.

I didn’t have a lot of experience overseeing technology projects when I started this job, but I can tell you this – the work that government does is complicated, and it affects many parties. And every bit of the difficulty and complexity in our work is reflected in the technology we are employing to help us do that work.

The Judicial Department spent years in the planning stages for our eCourt system, only to find that during that time the technology had changed, and the products available from vendors had changed. It took a fair amount of courage to re-assess our position and change course. We took some lumps for doing that, but I think both the legislature and the courts agreed that it was the right step – instead of buying a bunch of different products and trying to weld them together ourselves, we bought an integrated product that can do most of the things we were looking for, from a vendor that had installed the system in six states and a number of large metropolitan courts – such as Dallas, Minneapolis-St. Paul, Miami, and Las Vegas.

Our appellate eCourt system is up and running and working well. Parties can electronically file briefs and other documents (and they do, more than half the time), exhibits and files from the trial courts can be transmitted electronically, and the internal court operations side is handled electronically. We still have paper around, but the majority of our work is done on the computer. When I’m working on an opinion, I don’t have a hard-copy file — the file is digital, and everybody has access to it all the time. Most members of our court read briefs on an iPad. Implementing eCourt in our appellate courts was a complicated undertaking, but still was relatively easy – we have a total of, now, 20 appellate judges, we have only one location, we

handle several thousand cases a year, and the majority of the work of the Court of Appeals and Supreme Court comes from other state entities – the appellate sections of the Department of Justice and the Office of Public Defense Services – so there are a limited number of connections we needed to make.

Compare that to our circuit courts. We have one judicial district that has one judge, serving two counties, and handles less than 1,000 cases in a year. We also have Multnomah County, which has four court locations in one county, almost 40 judges, that gets nearly 200,000 cases filed in a year. In total, the circuit courts handle hundreds of thousands of cases each year involving about 50 million pieces of paper. We need to get the right document to the right clerk, or judge, or attorney, at the right time, using the right processes. We need to do that thousands of times a day without making mistakes.

In addition, we need to connect our systems to law enforcement, DMV, the Department of Corrections, Department of Justice child support, DHS, and many other electronic systems, almost all of them using different software – it is immensely more complicated to do this at the trial court level.

Despite this complexity, we have been able to successfully implement new systems in our appellate courts and in eight circuit courts. We go live next week in Benton and Polk Counties. I've visited both those courts and they are excited and ready for the change. We then move on to Multnomah County in May and later in the year, to Marion County. These courts will be ready to go — we've taken the lessons learned about training, about business processes, about hardware — and each implementation has gone more smoothly than the previous ones.

So what have been the challenges and the pitfalls? We have had to do this work with declining court resources. It's hard to ask judges and staff to do the very substantial training and preparation work necessary for a successful implementation when they already have more work than they can handle. And when I ask judges and staff what is not getting done while they are preparing and training for eCourt, I often hear the phrase 'my day job' in response.

Working with a vendor can be challenging. I think we have a good vendor — Tyler Technologies — and a good contract – one based on deliverables, by the way – but issues come up, things change, people retire, members of the vendor team move on or get transferred . . . you name it. Both parties have to be committed, but flexible, because you are now inextricably linked in making this process work.

Another challenge is that not everything works every time the way you want it to. Our vendor underestimated the complexity of automating our Uniform Criminal Judgment – our primary document for sentencing criminal offenders – so we are continuing to refine that. The UCJ is very important to our system, but also very complicated. It's also something we need to produce quickly in the courtroom, while the judge, attorneys, and defendant are there.

Sometimes the system 'hangs up' – I'm sure you all have seen the little 'hourglass spinners' that means the system can't get you to the next step. Watching spinners means we are spinning our

wheels, and not getting our work done. We're working on identifying the causes of those spinners and fixing them. That's still a work in progress.

Another challenge is simply that things work differently than they used to. Old habits – and work patterns – can be hard to change, both in the courts and among the attorneys. Many of the ways we do things vary dramatically from court to court — in fact many of our forms and our procedures date back many decades. We have been building this court system since the 1800's, and many things continue as part of tradition.

Attorneys who are used to using the federal court system sometimes think there are problems with the state's eFiling system – and sometimes there are -- but sometimes it's just because the systems are different.

All that being said, the eCourt system is accomplishing its main purpose – to automate internal case management and document management, and provide opportunities for efficiencies in handling the never-ending flow of disputes that come to our courts for resolution.

It also has provided other benefits. We have been able to expand our technology infrastructure, so we are much better connected by technology – an important factor if we use judges or staff in one part of the state to help with workload in a court elsewhere in Oregon.

People are able to pay court fees and fines online. This makes payment more convenient, and also reduces workload for court staff. OJD has received more than \$23 million in payments using our ePayment system. Doing those transactions electronically instead of in person or over the phone has saved the equivalent of 23 people working full time in the two plus years we've had that system running. Those aren't people that we can lay off – because we already took those staff reductions – but we won't have to add to our staff to handle our workload. When eCourt is rolled out statewide in 2016, we will be able to take a comprehensive look at how we can re-assign staff as necessary or identify those types of savings in all our courts.

Attorneys are able to electronically file pleadings in our eight circuit courts that are using Odyssey. Although we are only in the initial stages of using eFiling in the trial courts, we already have received about 3,000 eFilings, which we estimate has saved 60 days of staff time that used to be spent accepting papers over the counter and placing them in files. As we move into the larger courts, like Multnomah and Marion, the ability to do eFiling will be a terrific benefit for everyone who uses the courts. Litigants won't have to mail in or hand deliver their pleadings, make multiple copies, or pay the costs to serve the other party – all that will be done electronically.

Oregon eCourt is not a panacea – and we do not and should not expect it to solve all our problems. But it is working, it has provided substantial efficiencies. We will continue to expand its use in criminal cases and we will make many court documents available online – to parties and the public generally.

We will be cautious and deliberate in making the information electronically available, because there are laws regarding confidentiality that we must follow. We also need to be sensitive to

legitimate privacy interests, given the kinds of information that can show up in court cases, but there is opportunity to make justice and government and the court process generally more transparent and open, and eCourt makes that possible.

Two final notes on eCourt — I went down to Albany in December, where the Linn County circuit court just celebrated their first year of being on the Odyssey system. The presiding judge down there had a party, and he asked whether anybody – staff or judges -- was interested in going back to the old, pre-eCourt days — not a single person was. Despite some bumps in the road and specific things people didn't like or that didn't work the way they wanted, all the staff and judges felt that, overall, the system was better and more efficient than what we had before.

I also spoke the other night with a Salem lawyer, Mark Comstock, who's been one of our guinea pig testers for eCourt, with all its ups and downs over the past six years. I asked him how it was going, and he said, "It's working for me." That's what we want lawyers and citizens to be able to say about eCourt – that it's working for them -- and we're on our way to getting there.

Looking Ahead

Thank you for indulging me in that somewhat lengthy sidebar. Oregon eCourt is an important component in discussing the state of our courts, as well as our citizens' understanding of the state's ability to implement a technology project, so I wanted to take that time and provide more detail than you otherwise would have gotten.

So what's ahead for our courts in 2014? As I'm sure you are aware, the legislature will be in town next week for hearings, and then will convene its month-long session on February 3. Our focus then will be on money. The legislature held back two percent of everyone's budget to keep an eye on revenue forecasts, and we need at least some of that back. The legislature also temporarily increased court filing fees so court users would not have to pay a separate transaction fee for each eFiling. We need to make that filing fee increase permanent, so we can continue expanding eFiling in our circuit courts, as they come on line with the Odyssey system.

Then we will move on to the 2015 session, where we again will engage our legislative colleagues in a discussion about funding access to justice in Oregon. Here are some of my priorities going forward:

- We again will seek money to restore the staff we need to provide timely and complete services to the public. Strategically restoring staff positions will improve our ability to help people who are not represented by an attorney – which includes the majority of people involved in family law cases – help us help our citizens to navigate the judicial system, and restore our ability to issue timely decisions.
- We will look at whether and where we might need more judges in the state. Despite population growth, the legislature has not approved any new trial court judges since 2005. My preference is to make sure we take advantage of opportunities to use technology — and we do a lot of this already — like video feeds and the electronic

records that we have through eCourt, to enhance productivity through remote judging. For example, when there's not a judge available in La Grande, Judge Greg Baxter in Baker City, who has video cameras and screens in his chambers and in his courtroom will often have time to hear a summary judgment motion or handle a change of plea -- remotely. I view our judges as statewide resources, and remote judging allows us to match the resource with the need as efficiently as possible. We will be doing more of that. Nevertheless, population growth in some judicial districts over the past decade means that we, and the legislature, need to take another look at adding new judges in districts that have experienced significant growth.

- We need to look again at judicial compensation. The 2013 legislature gave judges a cost-of-living increase (to cover the more than five years in which judges had no pay increase of any kind) and a modest salary increase. I deeply appreciate their recognition that the call of public service alone is not sufficient to recruit judges statewide who have the diverse legal experience we need to have on the bench. I am talking with legislators about re-instating the Public Officials Compensation Commission, or something like it -- to provide an objective, citizen-based view of compensation for elected state officials, and remove some of the politics from these decisions.
- And finally, continue implementing Oregon eCourt in the remaining 17 Oregon counties. Approving our implementation funding will complete our statewide roll-out in mid-2016. We also need to ask the legislature to fund maintaining the system, so we can continue to train judges and staff, and support this new tool to take advantage of all its benefits.

Conclusion

I wanted to close by talking about access to justice -- something I have mentioned in a few different contexts today.

First, there is physical access to justice. We need safe courthouses in which to conduct the public's business. They need to be safe structurally, and need to provide sufficient security to prevent violence against litigants, witnesses, judges or staff. Expanding physical access to justice also includes our efforts to provide electronic filing -- so you can file pleadings any time from any place with Internet access, and people can access some court documents online -- again, with appropriate consideration of confidentiality and privacy concerns.

Next, there is financial access. It costs money to file cases, to hire an attorney, and to provide and review evidence needed to prove a case in court. Both the courts and the legislature need to take care that all Oregonians have the ability to seek justice in their courts. Many of these costs are beyond our ability to control, but we need to keep in mind that services such as indigent defense and Legal Aid need to be supported in order to prevent Oregon from having a justice system that is available only to the very poor or the well-heeled.

I think it's fair to say that, because of the constitutional requirement that the state provide a lawyer for a person charged with a crime (if the person can't afford to pay one), the legislature has recognized, and done a good job funding indigent defense. But the poor face many other

legal problems — from family law matters to housing, social security, and employment issues, where they probably need a lawyer, but can't afford one. Current legal aid funding meets only about 15 percent of the need in Oregon, and we must think creatively about ways to increase legal aid funding — and otherwise meet the needs of the poor for effective access to justice.

Finally, there is procedural access. The laws and rules under which courts operate are complex, and can be full of traps for the uninformed. We need to maintain a fundamental element of fairness in our justice system, while living within our available resources.

Let me give you a couple quick examples of what we are doing to provide procedural access to Oregonians. As part of Oregon eCourt, we are working on providing 'intelligent forms' in family law cases – legal forms similar to TurboTax or similar programs. You provide the facts and the program fills out the forms you need.

Litigants benefit by having a better idea what information is needed in court, and courts benefit by having complete information available when the case gets to a judge, instead of having to wait or re-schedule a proceeding to get the information required by law. Through a collaborative project in Multnomah County, victims of domestic violence can use Turbo Court forms to prepare the paperwork necessary to get a Family Abuse Protection Act restraining order against an abusive spouse or partner. We are working to make those forms available statewide by early February, and I have committed to make another set of frequently used family law forms available in the Turbo Court/interactive format within a year. This is an expensive proposition, but will make getting into family court easier for people who can't afford a lawyer.

Another example of improving procedural access is occurring as a pilot program in Deschutes County, where parties in a divorce can mutually agree to an 'informal trial' before a judge. The parties – who typically do not have an attorney --do not have to provide witnesses, and witnesses are not available for cross-examination. But in relatively simple divorce cases, the parties can present information directly to a judge, and avoid a lengthy, time-consuming process to dissolve a failed marriage. This process is new, but so far is getting good reviews from the court and litigants alike. And if it works, we will look at expanding it to other judicial districts as well.

The legislature inherently understands access to justice, but looks at it from a slightly different perspective. When the legislature passed its PERS reforms – in July, and again in September of last year – it passed a statute sending the anticipated legal challenges directly to the Supreme Court.

Why? Because they knew that these issues would eventually wind up in the Supreme Court, and wanted to reduce the time it took to get a final legal decision on its policy changes – changes that affect thousands of people and hundreds of millions of dollars.

Put another way, the legislature wanted timely access to justice. (And I might add that we are expediting those cases.)

Our challenge is to make sure that timely access to justice available to all Oregonians, as they seek to resolve their own disputes -- whether they are trying to collect a debt, be treated fairly in

the workplace, seek redress for an injury, or pursue the ability to develop their property or protect their farmland.

That is the promise of our constitutional system — and it's the promise that the women and men of the judicial branch work hard every day to fulfill.

Thank you very much.

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