

State of the Oregon Courts: *Today and Tomorrow*

Chief Justice Paul J. De Muniz
Address to the Salem City Club
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Supreme Court colleagues, State Court Administrator Kingsley Click, former Chief Justice Carson, Chief Judge Brewer and judges of the Court of Appeals, Tax Court Judge Henry Breithaupt, Marion County Circuit Judges, Oregon State Bar President Richard Yugler, members of the bar, members of the City Club, thank you for joining me here today.

I would like to thank the City Club of Salem for giving me the opportunity to deliver my second State of the Courts address. I very much appreciate the City Club providing this venue and for its support of Oregon's Judicial Branch of government. As with last year, this address is being streamed live to every courthouse in Oregon, and my remarks will be available on the Judicial Department's website in video and in a more complete text form. However, unlike last year, our video stream is provided through a wireless format that is being tested for the first time as part of our disaster and business continuity planning.

I have entitled this address "State of the Oregon Courts: Today and Tomorrow." In that regard, my remarks today will focus on three areas.

First, I will provide a very brief overview of the day-to-day operations of our state court system at each court level. Second, I want to describe our relationship with the other two branches of government and the legislature's funding of the judicial branch for the 2007-09 biennium. And finally, I want to look over the horizon to what lies ahead for the Oregon court system.

Day to Day Operations

Let me begin with an overview of the day-to-day operations of our state court system. Today, the Oregon Judicial Branch of government comprises a Supreme Court, Court of Appeals, Tax Court, and 36 circuit courts in 27 judicial districts. Our budget for the 2007-09 biennium is \$359.4 million. The work of our courts is carried out by 1,800 dedicated and talented employees and 191 judges. To those women and men of the Judicial Branch who, day in and day out, are dedicated to protecting children, strengthening families, enhancing public safety, and enforcing economic and property rights — you have my most profound respect and thanks.

In 2007, 605,753 cases ranging from traffic violations to aggravated murder were filed in Oregon's circuit courts. Of those cases filed, Oregon judges presided over 21,000 court trials and more than 3,000 jury trials. There is, however, something more important than the statistics. Today, in Oregon, our circuit judges are fully invested in their individual communities and have fully embraced the view that difficult societal problems that eventually end up in our courtrooms cannot be solved by the judicial branch alone, but instead require the collaborative efforts of each branch of government. Although that collaborative effort must begin at the highest levels of government in Salem, it can succeed only if it is fostered and implemented every day in our local communities through innovative relationships between courts, local governments, and the agencies of the other branches of government, such as mental health agencies and professions, law enforcement, criminal defense communities, and others.

In that regard, I would like to highlight just one of the many examples of successful circuit court programs that exemplify the kind of intergovernmental collaboration that I have just described. Today, there are 57 treatment or therapeutic courts in Oregon that use a problem-solving model to protect the public and enhance the chances of successful outcomes for people who have mental health issues or are addicted to drugs or alcohol. This approach provides the structure to hold the participants accountable while offering opportunities to make permanent life changes. In 2007, four juvenile drug courts, two family dependency drug courts, one adult drug court, and one mental health court were added to Oregon's roster of treatment courts. I am pleased to report that these courts work. In 2007, 90 percent of Oregon's adult drug court graduates did not have a new felony or misdemeanor charge within one year of graduation. We are

currently collaborating with the Executive Branch, through the Criminal Justice Commission, to develop a methodology to conduct a statewide recidivism study that will allow us to compare Oregon's adult drug court participants with "business as usual" defendants.

These very successful courts would not have become a reality were it not for the collaborative efforts of the legislative and executive branches, as well as the local governments in each of the counties where these courts operate.

Next, I want to highlight a new and innovative judicial education program established for circuit court judges and implemented in 2007. This program places Oregon among state leaders in judicial education and training.

Each judicial district in Oregon is led by a presiding judge who is appointed by the Chief Justice at two-year intervals. As the highest local administrative authority of the courts in each county, presiding judges experience a variety of management challenges and opportunities during their appointments. To prepare them to meet these challenges, the Judicial Education Committee of the Judicial Branch has developed and implemented a presiding judge education and training curriculum.

This curriculum educates and trains presiding judges in a variety of areas, including budgeting, personnel management, case management, intergovernmental relationships, and public outreach and civic education. That education for presiding judges throughout the state greatly enhances the professional management of courts consistently with our judicial branch values: prudent resource management; timely production of quality work; and enhancement of the public's access to justice.

I want to conclude the overview of the work of our circuit courts by acknowledging the significant role that our citizens play in Oregon's judicial system. The courts of this state belong to all Oregonians. Nowhere is that ownership interest better demonstrated than in the nearly one million hours that citizens give to our court system each year. These people are our neighbors who serve on juries, our friends who review the case plans of children in foster care, and our fellow citizens who volunteer their valuable time as mediators in small claims and landlord/tenant cases. At this time, I also want to offer my personal thanks to those Oregonians across this state who have served as Citizen Review Board members, jurors, mediators, and in other volunteer capacities. This past year, Citizen Review Board members have reviewed cases involving 7,300 dependent children, and jurors across the state devoted the equivalent of 194,497 days of jury service. As these two figures confirm, the judicial branch could not fulfill its constitutional role in our democracy without the valued and full participation of Oregonians in every community in this state.

Let me now turn to our other courts.

Again, this year I would like to acknowledge the excellent work of the 10 judges and staff of the Oregon Court of Appeals.

The Oregon Court of Appeals consistently ranks as one of the busiest and most highly respected appellate courts in the nation. Each of the 10 judges on the Court of Appeals likely participated in the decision-making of more than 1,000 cases this past year. In 2007, the Court of Appeals authored a record 572 written opinions.

I would like to thank Chief Judge David Brewer for his inspired and forward thinking leadership of that court. In that regard, Chief Judge Brewer is also lending his expertise and leadership to the other 38 intermediate appellate courts in the country. Judge Brewer is currently the vice president of the National Council of Chief Judges, and he will become the president of that organization in 2009.

The Oregon Tax Court, lead by Tax Court Judge Henry Breithaupt, is one of only three state tax courts in the United States. The Tax Court, which is located here in Salem, has exclusive statewide jurisdiction over cases that involve Oregon's tax laws. Since last year, the case filings in Oregon's Tax Court have continued to decline, because the number of tax contests regarding assessed property valuation has decreased. In response to that decline, we have reduced Tax Court staff and shifted resources to our circuit and appellate courts. I want to acknowledge and thank Judge Breithaupt for his leadership of the Tax Court and his prudent management of Tax Court resources.

As chief justice, I am honored to preside over the work of the Supreme Court. The primary work of the Supreme Court is the discretionary review of decisions of the Oregon Court of Appeals. In 2007, the court decided more than 1,200 petitions requesting review of a decision of the Court of Appeals and issued 80 written opinions.

I am also pleased to report that in 2007, the Supreme Court decided a record 74 percent of its cases within six months of argument or submission, and decided 40 percent of its cases within three months of argument or submission.

I want to publicly thank and congratulate my colleagues on the court for their dedication to the timely resolution of the important cases entrusted to the court. It is a great privilege to serve with each of my colleagues on the court.

In 2007, as part of a continuing public outreach and civic education program, the Court of Appeals and the Supreme Court heard a number of cases at educational institutions across the state. In 2007, the Court of Appeals traveled to Banks High School, David Douglas High School, Roosevelt High School, Crook County High School in Prineville, Madras High School, and Newberg High School. The Supreme Court heard cases in Prineville and in Pendleton, and, just two weeks ago, the Supreme Court heard cases in Gold Beach and Coos Bay. During these sessions, we are frequently joined by local legislators and local governmental officials who participate in the question and answer periods that are the focal point of each school visit. Having the other branches of government represented at these proceedings truly enhances the goal of educating the public about how the three branches of government function in our system of government.

To conclude my overview of our daily operations in 2007, I want to reiterate my profound respect for the work that judges, court staff, and judicial employees perform at each level of the court system. I am truly humbled by their dedication and commitment to serving the public each day and to providing access to justice for each Oregonian who seeks it.

Inter-Branch Relationships

Now, let me turn to some observations regarding the relationship between the three branches of government in Oregon and the results of the 2007 legislative session. When I gave my first State of the Courts address last year, the 2007 legislative session had just begun. At that time, I described the Oregon court system as strong, accountable and innovative, and poised to take the administration of justice into the twenty-first century. I indicated, however, that the judicial branch had been under-funded for a number of years and needed the cooperation and assistance of the other two branches of government to enable the judges and staff of the Oregon Judicial Branch to meet our future constitutional responsibilities. At that time, I identified three priorities of the 2007–09 judicial branch budget report to the legislature. I will now comment on the fate of each of those priorities in the 2007 legislative session and on certain other legislative action supporting the Judicial Branch.

As we approached the 2007 legislative session, judges in Oregon were the worst paid in the country — fiftieth out of 50 states. Judges in Oregon had not had a salary increase, not even a cost of living adjustment, in more than seven years. Therefore, our first priority of the 2007 legislative session was to seek a salary adjustment to move judicial compensation in Oregon to a level commensurate with the important problem-solving and leadership roles that judges perform in our communities every day, and to achieve a salary level that would permit the Judicial Branch in the years ahead to attract some of Oregon's best and brightest lawyers to a career in judicial service. In addition to an immediate salary adjustment, I also supported the establishment of a neutral salary commission that would review and make recommendations regarding the compensation for elected public officials in all three branches of government.

I am pleased to report that the 2007 Legislative Assembly enacted legislation adjusting the compensation of Oregon's judges by 19.4 percent over the 2007–09 biennium. Of equal importance, however, the legislature also established a Public Officials Compensation Commission. That commission is required to meet every even-numbered year to review and establish salary recommendations for elected public officials in each branch of government, and to present that report to the president of the Senate, the speaker of the House of Representatives, and the chief justice. Under the new Public Official's Compensation Commission legislation, the commission's recommendations must be included in the Governor's budget report to the Legislative Assembly and are required to be considered by the Legislative Assembly in preparing the budget for the state. The Commission's first report will be issued in November of this year, to be considered during the 2009 legislative session. In my view, this kind of neutral salary commission established by the legislature in the 2007 session is the best way to keep judicial compensation current and to minimize the perception that the legislative funding of judicial salaries is influenced by politics.

In addition to the compensation adjustment, the Judicial Branch also made progress on other initiatives vital to a modern functional court system during the 2007 legislative session.

In that regard, our second budget priority for the session was to introduce to the Legislative Assembly our five-year plan to build the largest and most accessible courthouse in the state — the Oregon eCourt. No one can argue with the proposition that technology has dramatically altered how business, government, and individuals function. Unfortunately, our current case and financial management systems, built in the 1980s, have only limited ability to provide data for managing judicial programs; provide only limited ability for the public and other governmental entities to interact with us electronically; and are extremely difficult to upgrade so as to accommodate the changing demands of the work that we perform.

In general, the eCourt initiative that we have carefully planned will allow access to courts and judicial services through the internet from anywhere, anytime, and will implement efficient, standard business practices throughout the state.

One of the most important features of the eCourt system will be the ability to share information with Judicial Branch stakeholders. The eCourt system will provide the ability to send and receive critical information with public safety agencies, related justice agencies such as the Department of Corrections and the Department of Motor Vehicles, with civil and human services agencies such as the Department of Human Services and the Department of Justice Division of Child Support, and with local government agencies such as sheriffs, district attorneys, and county juvenile departments. In the end, the eCourt strategy that we propose is not a technology project at all, but, rather, a five-year business plan. It is a plan that is intended to transform the operations of the judicial branch of government in ways that will greatly benefit the citizens of Oregon, by dramatically increasing the ability of this branch of government to provide just, prompt, and safe resolutions of civil disputes, to ensure public safety, and to improve the quality of life in our communities for our children and for families in crisis.

I am pleased to report that the Legislative Assembly responded very positively to our eCourt strategy, and during the 2007 session, it provided budgetary funding to continue the planning and research necessary to ensure that the legislatively appropriated funds are spent prudently and wisely. As our eCourt strategy unfolds, the Oregon Supreme Court and the Oregon Court of Appeals will be leading the way as Oregon's first courts to have electronic filing, electronic payment, and electronic case management.

Since the end of the session in June, we have been working closely with the Legislative Fiscal Office and an interim legislative committee that the 2007 Legislative Assembly established to evaluate our eCourt initiative. On December 17, that interim legislative committee unanimously recommended to the Joint Committee on Ways and Means of the Legislative Assembly the approval of \$27 million in debt financing to fund the first two stages of our eCourt strategy through the 2007–09 biennium. Securing the approval of the Ways and Means Committee and the legislature is our only priority for the February 2008 session that is about to begin. The legislature's investment in our eCourt strategy will be a significant one, but the return on that investment will continue well into future generations of Oregonians.

The Judicial Branch's third priority for the 2007 legislative session was to begin to approach Oregon's court facility problem in a meaningful way. Although the ownership and maintenance of the state's courthouses is not a judicial budgetary matter, it was my view that the deterioration of our courthouses had reached crisis proportions in many counties, requiring a systematic, statewide solution to keep the justice system functioning in several counties and, in some situations, even to protect lives and avoid catastrophe.

Although the courthouses are owned and required to be maintained by the counties, the courthouse infrastructure problem goes to the very heart of what the Judicial Branch of government must stand for in our state and in each of our communities. When our first citizen pioneers began our first communities in Oregon, they built a church, a school, and a courthouse. It is the courthouse in each community that symbolizes and, in reality, must provide that justice is available to everyone everywhere. Courthouses that are crumbling, that are dangerous to those who work in them, that are dangerous to the public that must enter them, and that are not accessible to the mobility impaired, tarnish greatly that symbol of justice.

In response to a report issued by a joint task force, made up of representatives from the Judicial Branch, the Legislative Branch, the counties, and the Oregon State Bar, which outlined the deteriorating conditions of our county courthouses, the 2007 Legislative Assembly created an interim legislative committee to oversee a comprehensive statewide courthouse study by the Department of Administrative Services (DAS). The legislature provided \$1.2 million to fund the DAS study, which will identify the current status of Oregon's county-owned courthouses; identify the cost of courthouse renovations and replacement; and establish a relative ranking of court facilities based on health, safety, and other renovation requirements. Through the adoption of a common set of courthouse standards, this comprehensive study will allow the legislature to prioritize what facilities have the highest needs and truly plan for the future.

In concluding this section of my remarks, I want to acknowledge that we in the Judicial Branch understand that, each session, the Legislative Assembly must determine this state's funding priorities from among numerous core governmental functions and many economic, educational, and social-societal needs. In the 2007 legislative session — due to the vocal leadership and support of Governor Kulongoski, legislative leadership on both sides of the aisle, the Oregon State Bar, the business community, and other stakeholders — I believe there was recognition that, at the center of a vibrant, safe, and prosperous Oregon, is a well-funded, functional court system.

I personally appreciate the dedication and professionalism of those in each branch of government who recognized a growing crisis and provided the leadership necessary to strengthen the long-term institutional integrity and independence of the Judicial Branch.

The Future – Opportunities and Challenges

As I indicated, my remarks are intended to address Oregon courts today and tomorrow. I would now like to look over the horizon at the court system of tomorrow. Like any large business or institution, Oregon's court system must constantly assess what we do, how well we do it, and how we can do it more successfully, and we must anticipate and prepare to meet the changing needs and demands of future generations. In the next few minutes, I will describe some of the opportunities and the challenges that I foresee in the future of the Oregon court system.

As I have commented earlier in these remarks and in other forums over the past two years, many of the societal problems that end up in the court system cannot be solved solely by this branch of government. Instead, these problems require inter-disciplinary solutions, in which all three branches of government collaborate to find and implement creative solutions. In my view, government functions best when there is open and extensive communication between the branches of government. In that regard, I would like to acknowledge and thank Representative Wayne Krieger for his tireless efforts to foster communication between the Judicial Branch and both sides of the legislative aisle during the 2007 session.

At this time, I would also like to recognize the bipartisan legislative effort intended to make a difference in the lives of children under the care of the Department of Human Services. Recognizing the importance of this issue to each branch of government, a group known as The Gang of Four — Senate Majority Leader Kate Brown, Representative Mike Schaufler, Senator Jeff Kruse, and Representative Wayne Kreiger — headed a work group that included Oregon Court of Appeals Chief Judge David Brewer to address this serious issue. That work group met more than 20 times over the course of 14 months. Out of this effort came the enactment of six major substantive bills that helped to improve and to reform our juvenile dependency system, and also modernized the processes and procedures that the courts use in these sensitive cases involving children, our most vulnerable citizens.

Regarding this bipartisan effort, Representative Kreiger said, and I quote, “This is the greatest cooperation I've seen among the Judicial, the Legislative and Executive branches. These bills help protect children and parents, improve the court process[,] and help DHS better provide the services needed by children and families.”

I agree wholeheartedly with Representative Kreiger that open communication between the three branches of government and these types of effective and appropriate collaborative efforts between the branches can improve the lives of people in our state and our system of government, and should continue to thrive in the upcoming years. To build on the healthy branch relationships established during the 2007 session, we have established a judicial ride-along program, in which individual legislators spend a full day in their local courts becoming familiar with many crucial parts of the criminal justice system, including the prosecutory function and the criminal defense function. Looking to the future, I believe that enhancing the communication between the judicial, executive, and legislative branches, and collaborating to seek inter-branch solutions, is vital to the success of the Judicial Branch and to the success of our state in the years to come.

Let me turn now to one of our future challenges. One of the most significant changes in the court system of the nation and in Oregon in recent years is the growing number of self-represented litigants. Most judges now spend a significant portion of their judicial career handling cases in which at least one party is self-represented.

This change offers both opportunities and challenges for trial judges and court staff, highlighting the crucial role that they play in ensuring that the self-represented obtain access to justice.

However, self-represented litigants often have difficulty preparing complete paperwork, meeting procedural requirements, and articulating their cases clearly to a judge. These difficulties produce obvious challenges.

Many innovative solutions exist to help litigants prepare adequate court forms and to prepare for court hearings. Yet, these current solutions cannot completely substitute for the three years of law school and the experience that lawyers bring to the courtroom. Until recently, there has been little guidance for judges and court staff as to how to meet the challenges of ensuring access to justice while managing an efficient calendar that includes such cases.

Recent statistics reveal that in Oregon, in 68 percent of what we describe as family law cases, at least one of the parties is not represented by a lawyer. To meet this growing trend in self-representation, the Oregon Judicial Branch is formulating a statewide plan to enable self-represented individuals to more easily navigate through the court system. Our statewide plan will include additional education and training for judges and court staff in working with self-represented litigants, developing as many interactive forms as possible, and making those forms accessible to self-represented litigants over the internet and at the courthouses. Creating an effective statewide plan will require the collaboration of many groups and stakeholders involved in Oregon's legal system. At this time next year, I hope to announce the completion and successful implementation of that plan.

Another critical area of needed improvement in our courts is in the administration of protective proceedings. These guardianship and conservatorship proceedings require court oversight of fiducial assets and of vulnerable people, primarily the elderly and their families. Given the growing volume of these cases in our courts, judges and community partners who are passionate about the need for attention to this aspect of our court system proposed that a task force be established to examine current practices and to recommend further court safeguards and resources.

To accomplish this, I have established an Oregon Supreme Court Task Force on Protective Proceedings, co- chaired by Judge Rita Cobb of the Washington County Circuit Court and Senior Judge Betsy Welch, formerly of Multnomah County Circuit Court. This task force intends to prepare a report with recommendations to me that will be released by the end of 2008 or early 2009.

As I mentioned earlier, the Oregon business community sent a strong message in 2007 that there is a direct relationship between a functional, modern court system and economic prosperity. I greatly appreciate the business community's strong support of our budgetary requests in the 2007 legislative session and I want to strengthen that support by ensuring that Oregon business views the Oregon court system as a litigation forum of the first choice, not the last choice. To do that, we need to ensure that Oregon judges are well-trained in complex litigation subjects, so that the parties to complex litigation can be confident that the law will be administered competently and consistently from judge to judge and from county to county, and that each case will be administered in a method that fosters the most prompt, efficient and inexpensive resolution of those cases. To accomplish this, we are expanding this year the education and training opportunities for judges in complex civil litigation.

With that additional judicial education and training, as well as our focused commitment to this aspect of the court system, it is my hope that we can expand the commercial or complex litigation court concept that we first established in Lane County to courts in other counties in Oregon.

Offenders in Oregon currently owe victims of crime, the State of Oregon, and local governments nearly \$900 million. During 2007, the Oregon Judicial Department continued to expand its collection programs through efforts such as a restitution court in Clackamas County and the use of new methods to aggressively track down delinquent debtors. I am pleased to report that the Judicial Branch developed a timely and sophisticated program to intercept the recent kicker rebates of these delinquent debtors. That interception program increased our collections this year by \$4.5 million. The total amounts that the Department collects continue to increase, totaling more than \$110 million in the last year. In the years to come, the Judicial Branch will enhance its efforts to aggressively and innovatively collect even greater amounts owed to victims of crime.

In 2007, the Judicial Branch also began the process of developing a five-year strategic approach to improving security in Oregon's courthouses and ensuring that court operations are able to continue even when business is disrupted due to a natural or man-made disaster. Funding for these efforts was provided by the 2005 Legislative Assembly. Currently, the security of the appellate courts is being addressed, and business continuity plans have been developed for all courts in the state. In the upcoming year, our efforts will include working collaboratively with local partners to set up and provide funding for minimum security standards in every courthouse in the state, and for the testing of business continuity plans.

I would like to close my remarks today with these final points. As the leader of the Judicial Branch of government in this state, I am grateful for the cooperation and support that this branch of government is receiving from the legislative leadership on both sides of the aisle and from the executive branch. This year and in the future, I intend to continue efforts to enhance our relationship with these branches of government to the best of my ability. Likewise, I want to assure the public that the judges, court staff, and employees of the Judicial Branch of this state are committed to earning the public's trust and confidence each day, each week, each month, and each year. Finally, I want to reiterate our Judicial Branch values. The Judicial Branch of this state is committed to prudently managing our resources, to treating the public respectfully, to producing quality and timely work, and to vigilantly protecting and enhancing every Oregonian's access to justice.

Thank you for the opportunity to speak to you today.