

**The State of the Courts:
MAINTAINING OUR COURTS DURING ECONOMIC CRISIS**

Chief Justice Paul J. De Muniz
Address to the City Club of Salem
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Judicial colleagues, members of the Bar, members of the City Club, and ladies and gentlemen – thank you all for joining me here today.

I also would like to thank the City Club of Salem for again providing this venue for me to deliver the State of the Courts address, my fourth as Chief Justice.

I would like to extend special recognition to three people here today:

- Associate Supreme Court Justice Michael Gillette, who has served 33 years as an appellate judge – a mainstay and the intellectual center of the Supreme Court.
- Kathy Evans, an outstanding Salem attorney and new president of the Oregon State Bar.
- The Honorable Rebecca Duncan, the newest member of Oregon’s judiciary, who was appointed yesterday by Governor Kulongoski to the Oregon Court of Appeals.

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 website in video and text format.

In preparing my remarks for today, I recalled a conversation that I had with one of my colleagues at a recent chief justices conference. We were talking during a break in the conference agenda, and the colleague said to me, “Paul, do you have a nice conference room to meet in at your Supreme Court?” I said, “Yes, our building is 95 years old, and we have a very nice conference room.” He responded, “Do you have portraits of former chiefs in your conference room like we do?” I said, “Why yes, some of them are quite large.” He said, “I bet they are just like the portraits in our conference room – the subject is wearing a black robe and has a book open, in a very contemplative pose.” I responded, “Well yes, exactly.” After a brief silence he said, “Paul, wouldn’t you like to have a job like that?”

The fact of the matter is that today a Chief Justice's job is a lot about management, about budgets, and about public and intergovernmental relations. It is much less – to my episodic dismay – about old leather-bound books and the rule of stare decisis.

In my remarks today, I want to briefly look back on the very difficult year we just completed and then focus on what that means for the future of our state and our state courts.

As I have done in each of my prior addresses, I want to first express my profound thanks and respect to the staff and judges of the Judicial Branch for their daily commitment to justice and their service to every person who enters our courthouses.

Noteworthy circuit court trials and the published decisions of the Oregon Supreme Court are reported daily in the media. However, the public's trust and confidence in the courts that is essential to our system of justice in our communities, our states, and our nation, is garnered for the most part by the public's daily contact with court staff and trial judges. For the overwhelming majority of court users – litigants, attorneys, jurors, witnesses, victims of crime – it is the staff and trial judges that are the face of justice in this state. So again, I extend my deep and heartfelt thanks to the judges and staff of the Judicial Branch for everything they do every day to maintain the public's trust and confidence in Oregon's courts.

Our Courts Today

In my State of the Courts address last year, I acknowledged the growing economic storm and the difficult state budget environment that we would have to confront in 2009. At that time, I affirmed that our courts would not be immune from budget cuts, and I pledged that we would be responsive and responsible partners in government – and we were.

Less than two months after my 2009 address, the legislature reduced the Judicial Department's budget to help balance the state budget at the end of the 2007-2009 budget period. We took the same percentage reduction from the General Fund as the other two branches of government. In addition, however, we also contributed more than our share of the Other Funds (non-tax money) taken to support other state services. The Judicial Department contributed 9% of those Other Funds taken to use elsewhere in the state budget, despite the fact that the Judicial Department is less than 1% of the state's total funds budget.

As a result of these funding reductions, and because the Judicial Branch budget primarily funds court staff, we were the only branch of government forced to impose unpaid staff furloughs during the previous biennium. Although we avoided closing the courts, every

Judicial Department employee was required to take six unpaid furlough days between March and June of 2009.

That sudden and unexpected income reduction caused significant hardship to many of our employees. However, I am pleased to report that Oregon's circuit and appellate court judges quickly and generously contributed nearly \$70,000 to a fund that helped 159 Judicial Department employees mitigate severe financial hardships. And I was pleased to read that the Salem Statesman-Journal had recognized this extraordinary effort by Oregon's judges, selecting it as one of their editorial page "winners."

When the Legislature looked to balance the budget for the current 2009-11 biennium, the Judicial Branch again worked with the Legislative and Executive Branch leaders as a responsible partner to deal with the financial crisis.

Let me give you some specific examples:

- In order to maintain our core adjudication functions and keep our courts open and accessible this biennium, we have sacrificed many critical support services – part of a 15% General Fund reduction taken in the current biennium.
- We are keeping our trial courts open five days a week, even though their budgets have been reduced by 7.2% and court staff are taking the same number of unpaid furlough days as the Executive Branch.
- We reduced the Oregon eCourt Program cost by half, lessening our investment in this critical project to modernize our courts and make them more efficient and effective. I will talk more later about Oregon eCourt.
- Our judges have held hearings or otherwise reviewed the sentences of almost 5,000 Department of Corrections inmates in order to produce budget savings for the state public safety system – and we are doing so without any additional funding for the courts.
- And with Governor Kulongoski and his staff's help, we obtained passage of state legislation that – upon passage of similar federal law – will allow state court judgments to be collected from federal tax refund intercepts. This effort – which involved all three branches of state government – will increase our ability to enforce court orders, and will collect tens of millions of dollars owed to victims

of crime and to state and local governments. I again would like to applaud Senator Ron Wyden for his diligence and effort in writing and introducing federal tax intercept legislation, and to other members of the Oregon delegation who have co-sponsored and supported that legislation.

- Finally, to attempt to stabilize Judicial Branch funding, our branch proposed a variety of fee increases and collections improvements to raise more money. Many of those ideas were approved by the legislature.

The details I have just described reveal at least two things about the state of our courts. First, our courts remain open and accessible today because the legislature has recognized that the work of the courts is intimately connected to every aspect of society, and because of the energy, innovation, and tireless efforts of our employees. We continue to adjudicate every case or matter that is filed, and we are doing so within appropriate timelines.

Second, that achievement came with a severe – but largely hidden – cost. Although we have weathered the budgetary tempest thus far without permanent damage or crippling cuts to our core judicial functions, the Judicial Branch today is not as strong as it was just a few short months ago.

In order to protect our trial courts and to maintain our core judicial functions, we eliminated an entire division – 22 employees – in the State Court Administrator's Office, and we eliminated two Deputy State Court Administrator positions.

Not only have we lost many skilled and valued colleagues and important services in the name of budget necessity, we have lost many services that help courts innovate and improve their services to the public and that give Oregon a unified court system instead of a collection of local courts.

Here are some examples. We no longer have a statewide drug court coordinator to promote the best practices in these highly-effective treatment courts that protect the public and reduce future criminal conduct. The statewide leadership and coordination we had had to improve these courts and enhance community safety has disappeared.

The same holds true for family courts, which globally address all the issues facing children and their families – whether those be safe placements for abused or neglected children, abuse protection orders, divorce, child custody, child support, delinquency, or other issues. There is no centralized support to help trial courts deal with the thousands of people

who appear in family courts every year who are unable to afford a lawyer and who rely on the court to help them navigate the legal system. Local courts are now on their own.

We no longer have full-time staff available to develop and monitor our performance measures, and we lost two internal auditors. The loss of both functions limits our future effectiveness and our accountability.

The reality today is that any significant additional budget reductions or revenue shortfalls will make it impossible to maintain an open and accessible court system. If anything more than minor reductions are required, it would unavoidably affect the trial courts that make up almost three-fourths of our budget, and more than 90% of their costs are for personnel.

If we are required to further reduce the budget, we regrettably will be forced to limit public access to the courts. Even a 5% reduction – when combined with these previous cuts – will force us to close courts to the public one day a week. That would be an unavoidable consequence of any significant additional reduction.

Although Oregon is not alone in these economic problems, here in Oregon we must find a better way to deal with these problems than have other states. The New York Times, in an editorial on November 25, noted that, because of severe reductions that state courts have undergone this year, the courts are at a tipping point.

It said that, “In too many cases, the cuts are already impeding core court functions, forcing court closures, shortened court hours[,] and a tangible narrowing of access to justice.” It concluded that, “at some point, slashing state court financing jeopardizes something beyond basic fairness, public safety[,] and even the rule of law. It weakens democracy itself.”

Fortunately, in Oregon I know that our legislators are as committed as I am to avoiding that catastrophic outcome.

Looking to the Future

When we find ourselves facing a budget crisis, we need to carefully maintain our core functions, and make any necessary reductions with an eye on the future.

Although our status as an open and accessible court system is precarious, we must, nevertheless continue to look forward, because we are obligated to deliver justice services that meet the needs of our modern, complex, and ever-changing society. Allow me to offer a few thoughts in that regard.

First, we need to continue using and leveraging technology to change the delivery of justice services in Oregon. The Oregon eCourt project is intended to be a statewide, web-based courthouse that will transform how Oregon's court system serves the people of this state. Building that "virtual" courthouse is our primary statewide undertaking for the next five years and the largest technology program that we have ever undertaken in support of the public, our judges, and our courts.

Last year we established electronic filing – what we call eFiling – in Oregon's appellate courts, and already we have received about 6,000 eFilings. Next month when the legislature returns, we will be working with them to ensure the completion of the eCourt system in our appellate courts, to allow documents to be handled electronically by those courts.

In 2009, we successfully introduced eCourt in two pilot trial courts – Yamhill County and Multnomah County. In those courts – and in Jackson, Crook, and Jefferson Counties later this year – any small claims or landlord-tenant case filed with the court is scanned and processed electronically thereafter. No longer in those courts is there the need to find those case files and move them in and out of storage, and from clerk-to-clerk and courtroom-to-courtroom.

We will thoroughly test that system in our pilot courts and then link it with electronic filing before we introduce it to courts statewide.

With eCourt's full implementation, Oregon will become the first state to provide a statewide virtual courthouse, and that technology will increase public access to the courts, improve court efficiency, and ensure that judges have complete and timely information with which to make their decisions. Parties can file and track lawsuits without visiting the courthouse, interested persons can obtain court information over the Internet 24 hours a day, and courts will operate much more efficiently and effectively.

Until then, Multnomah County alone will continue to receive a stack of paper eight feet tall every day, and it will accept, process, and file those papers by hand.

Despite the state's financial difficulties, Oregon eCourt remains a vital part of our strategy to establish and maintain a court system that is accessible, transparent, accountable, and engaged with the public.

However, the future of the courts is not all about technology. We need to renew our commitment to a public system of civil justice. We need to ensure that courts are able to efficiently and effectively process the tens of thousands of cases filed each year, which involve hundreds of millions of dollars.

This year we will implement two significant changes to assist in that effort. In last year's address, I mentioned two initiatives – creating an Expedited Civil Jury Case program and expanding our successful Commercial Court from Lane County.

The Expedited Civil Jury Case program will allow courts more efficiently to address a large number of cases that are not terribly complex but involve substantial amounts of money. These cases include many personal injury cases and contract disputes. Without going into great detail, cases eligible for the program will not be subject to arbitration, will have limited discovery and pre-trial motions, and the litigants will be guaranteed a jury trial within four months from filing.

This benefits the courts by moving cases through the docket faster. It benefits the parties by reducing the cost of litigation and getting a faster decision from the court. It benefits the Bar by providing invaluable trial experience. And it benefits the public by retaining a public system of justice and a trial by a jury of our peers.

I extend many thanks to two of my colleagues, Justice Martha Walters and Court of Appeals Chief Judge David Brewer, for their hard work on this program.

We also need to preserve access to the courts for complex civil litigation, and so we will expand the Oregon Commercial Court process. This affects a relatively small number of cases involving the largest and most complex business transaction disputes, breach of contract claims, employment lawsuits, malpractice and construction defect actions, and other cases.

Expanding the Commercial Court would make available statewide a group of judges who are knowledgeable and experienced in conducting this kind of litigation. This is all a part of keeping courts open and accessible to do the people's business, and to assist in resolving disputes and freeing economic resources to help get our economy moving again. I would like to recognize and thank Judge Karsten Rasmussen for all of his efforts in leading the way in our Commercial Court program.

Both these efforts will ensure that Oregon's public court system continues to be open and accessible to meet the needs of Oregonians to resolve financial disputes that they are not able to resolve by themselves.

Now, let me turn to our courthouses. We need to continue to ensure that the courts and the public that use them appear in safe and secure facilities.

I again am grateful to the legislature for approving \$11.5 million in funding to repair Oregon's crumbling courthouses. The legislature's willingness to stimulate the economy by investing in infrastructure improvements will provide basic security and health-and-safety improvements to 13 courthouses across our state.

And with regard to security in our courthouses, I issued a Chief Justice Order in July that, for the first time, establishes a uniform, minimum security standard for state courts. Over the next two years, the Judicial Department will work with the counties – who own and operate the court facilities where our state judges work – to ensure that judges, court staff, and the people who use court services are protected by cameras, appropriate access controls, and duress alarms in case of emergency. These critical improvements will not be paid for by tax dollars, but by funds paid by offenders as part of their conviction.

In the 2009 legislative session, the legislature also approved funding for a new roof for our 95-year-old Supreme Court building here in Salem. This is the first winter in many that we have not had to worry about water cascading into our offices and our beloved historical courtroom. So literally, my hat is off to Senator Courtney, Speaker Hunt, and the other legislators who made that possible.

These funded repairs are not an accident – they are an example of a plan bearing fruit. The 2007 legislature approved a study that documented the dilapidated and deteriorating condition of our county courthouses and prioritized those projects that were funded this last session. We still have much more to do to remove the boxes of paper case files that are stored under ancient water pipes, to upgrade aging buildings that threaten to crumble in the next earthquake, and to allow judges, jurors, and lawyers to see and hear each other in the same courtroom.

Although our courthouses desperately need more attention, we also need to start thinking about whether – in light of the progress that we are making toward a paperless justice system – it also makes sense to ask whether each county, or even each judicial district, needs its own, stand-alone courthouse.

Multi-use facility courthouses and regionalization of our judicial facilities might provide part of the answer to a problem that reached crisis proportions years ago and, I submit, should be part of a new public discussion.

And as part of our discussion on the future of Oregon's courts, we need to continue examining the relationship between our three branches of government as it relates to the funding of our court system. In my view, this is a threshold issue for the future of our branch of government.

To begin, I want to acknowledge and thank the Governor and the many members of the legislature who worked so closely with me last session to make sure that our courts remain open and accessible. We have started to change the dialogue from 'what cuts can this department take' to 'how can we sustain the constitutional role and duties of this equal branch of government.'

I was able to meet regularly with the legislative leaders and the Ways & Means Committee co-chairs, and help build their understanding and support for the importance of an open and accessible court system that meets the needs of all Oregonians as well as the requirements of our state laws and constitution.

It was the legislature's recognition of these principles – and understanding that the courts are intimately connected to every aspect of society – that led to the legislature's commitment to maintaining an open and accessible court system that now separates our state from so many other states, as mentioned in the New York Times editorial.

Although our trial courts remain open and accessible today, our court system is nevertheless destabilized as a result of the 'feast or famine' budgeting that has been visited on the Oregon Judicial Branch over the past two decades.

As many in this room might recall, in 2003 our court system was the unfortunate national example of the effects of inadequate funding of the courts. We laid off 25 percent of court staff and closed courts each Friday. Criminal prosecutions were severely limited, and we completely stopped processing small claims cases. It took us until 2007 to recover from 2003, and now in 2010 we are staring into the same abyss.

For the Oregon judiciary of the future, I believe it is time to change at a fundamental level the nature of the discourse between our three branches of government respecting how we fund our state's court system.

A court system is not like a faucet that can be turned on and off at will. It is not a program to which you can restrict eligibility. Timely and complete justice is a constitutional right for Oregonians to have, and a constitutional requirement for state government to provide.

Because we seem unable to modify our outmoded and unstable tax structure, it is time to find another solution to inoculate the courts from the feast or famine budgeting cycles that are so destabilizing to the courts' core constitutional functions. Oregonians rely on the courts being consistently available to sentence criminal offenders, issue stalking and other protective orders, review placements for abused and neglected children, grant divorces and divide marital assets, evict tenants who don't pay rent or damage rental properties, and rule on personal injury claims.

In short, Oregonians want to have their day in court, and know well that justice delayed is justice denied.

In my view, it is time to start talking seriously about dedicated funding for the Judicial Branch. I started those discussions during the last legislative session with legislative leaders, and I intend to continue that discussion with legislative leadership in the future.

And apparently, the public is becoming more aware of the devastating effect that unstable funding is having on Oregon's courts. An initiative petition is being circulated to enact a statute dedicating three percent of General Fund revenues to the courts.

I have no idea what the fate of that initiative will be. I am sure, however, that the hearty souls who gathered at Champoege to draft our constitution understood that well-functioning courts that deliver justice equally, promptly, and fairly are vital building blocks of our society, our economy, and our civic life, and that they must be preserved.

Let me conclude with these comments and observations. There was a time in our history when the courthouse and its courtrooms were thought of as a sanctified ivory tower – removed somehow from the ebbs and flows of everyday life, away from the rest of the community. Today, however, the work of our courts is connected to all of society. Communities depend on the courts to ensure public safety through the protection of individual rights, timely and fair adjudication of offenders, and the imposition of sentences and sanctions on offenders.

Indeed today, children and families depend on judges and courts for protection and economic stability through protective orders, safe placements for abused and neglected children, divorce proceedings, and child support.

Today, individuals, businesses, and consumers depend on the courts to enforce financial obligations and the rules of our economic system. Our country's history, and the struggles of new democratic societies elsewhere in the world, prove that a stable and accessible court system is crucial to the success of a free-market system. More so than ever, in this time of

economic crisis, the court enforcement of economic and property rights will play an integral role in our state's economic recovery.

That is the reality, and that is what is expected of our court system today. I am very aware that, in my remarks this afternoon, I have asked for significant contributions from our legislative and executive partners in Oregon government and from the citizens of this state. We need, and I am requesting, new dialogues about the way in which we fund our Judicial Branch, and how we maintain and provide for our physical facilities.

I am asking for the legislature's continued support as we build the virtual courts of our future, while we adhere at all times to the principle that decisions must be based upon the rule of law, and with a commitment that the parties who appear before us will be treated both fairly and impartially.

In return, I will pledge the efforts of my office, all of Oregon's judges, and the women and men of the Oregon Judicial Branch to a process of open court management. The courts in this state are the public property of every Oregonian. Our court system belongs to all of us collectively. And each of us in Oregon has a right to expect a future that is characterized by:

Courts that are accessible –

Courts that are transparent in their functioning and processes –

Courts and judges that are accountable –

And, finally, a judiciary that is engaged with the public that it serves.

Despite the financial crisis that confronts us, that is the kind of court system that we must provide to Oregonians.

Thank you again for giving me the opportunity to be here. I am grateful for it.