

2011 State of the Judiciary Address, "Keeping the Doors of Justice Open"
Chief Justice Charles W. Daniels, New Mexico Supreme Court
Message to the Legislature
January 25, 2011

Good morning, Governor Martinez, Lt. Governor Sanchez, President Pro Tem Jennings, Speaker Lujan, members of the House and Senate, to my colleagues in the judiciary, to our district attorneys, public defenders, law enforcement officers, those who represent children before the courts, and the others who are such an important part of providing true justice, and of course, to the citizens of New Mexico that we're here to serve.

Thank you for the chance to speak directly with the legislative and executive branches on behalf of the third co-equal branch. Sometimes we refer to ourselves as independent branches of government, and in a lot of ways, that's true. Each branch has its own responsibilities under the system of checks and balances the framers wrote into the constitution. The judicial branch can't pass laws like the legislature and doesn't have the right to approve or veto them, the way the governor does. The judicial branch has to interpret and honor those laws and make them effective, without second-guessing lawful decisions made by the two political branches. To do that, we have to make those decisions independently. We have to be independent of politics, and personalities, and public popularity. The judicial branch's one true allegiance has to be to the rule of law, and that includes the most fundamental law in a constitutional form of government, the constitution itself.

But we can't forget that the three branches are also dependent on each other. We have to work together to provide the government the people need, the government they created in the constitution.

The biggest example of the dependence of the judicial branch is that we're dependent on the other two branches for the resources we need to sustain the system of justice required by the constitution. It's required because the framers knew that no self governing democracy, no civilized society of any kind, can survive without a functioning justice system. Without courts that have the responsibility and the capability of enforcing the rule of law, government itself will surely fail. All the laws on the books are just hollow promises if the courts don't have the resources to enforce them. Without courts that are open to resolve disputes peacefully and lawfully in both criminal cases and civil cases, we're left to the lawlessness of the streets and the brute force of the jungle.

To keep the flame of justice burning, we have to come to you for the necessary fuel. We're the only branch with no authority to control what resources we have to carry out our responsibilities. We have no power to introduce legislation, no voice in the debates, no vote in committees or final passage, no line-item authority, no discretionary veto power of any kind. The constitution assigns those responsibilities to your branches. But for you to be able to make reasoned and fact-based decisions about what we need, we have a responsibility -- to communicate to you honestly and effectively about how we're using the resources we have, what we need, what we can function without, and what we honestly can't.

And those are the things I'd like to focus on today. As Governor Martinez stressed last week, these are tough times, and the people in this room live with that reality every day. They're tough times for all of us in government, and they're tough for the taxpayers who pay the bills.

In the judiciary, we've also taken this crisis seriously, from the Justices of the Supreme Court to the judges and staff of courts throughout the state. We've been working hard to cut costs wherever we can do it without violating our obligations to the law and to the people of New Mexico. Senator John Arthur Smith went out of his way to publicly recognize our cost-cutting efforts when the LFC released its budget recommendations a couple of weeks ago, and we thank him for that. We've been working closely with Senator Smith, Representatives Varela and Saavedra, and other LFC members and staff, going over where we are, what we're doing, and what we need to do. After all that work together, I'm convinced that whoever nicknamed Senator Smith "Dr. No" only had it part right: It should be "Dr. Knows What He's Talking About." With only slight adjustments, we can keep our doors open with the LFC recommendations. We started out 6 million dollars apart on this year's budget, but we've studied all the things we can do to live within the LFC recommendations, and now we're only \$800,000 apart, which is less than fifteen one-thousandths of one percent of the state budget. That's all it will take for the judicial branch to make it this next fiscal year.

Let me share with you some of what LFC has learned about what we're doing. After this financial crisis became obvious, we started meeting to deal with it on both a statewide and a local level. We realized that the immediate challenge was to keep the justice system functioning right now, but at the same time we had to plan for the future, to provide better services and to do it with the least cost. We've rejected the approach of denying the need for serious change, of just "coping and hoping" and expecting to get back to business as usual. That's not realistic, and that's not responsible.

The financial crisis is actually increasing workloads for courts-- foreclosures, debt collections, family conflicts, criminal cases, and so many other cases that we have no choice but to accept and resolve. The mismatch is dramatic. Caseloads have gone up over 7% at the same time budgets have been cut more than 10%. Not only have our appropriations been cut in dollar amounts, they have decreased each of the last few years as a percentage of the total state budget. To survive in the short term, we've had to make hard and sometimes painful cost-cutting decisions.

We've renegotiated building leases to reduce rent payments and we've closed some marginal magistrate courts.

We've cut back on training, meetings, and travel, and issued orders that no judicial branch travel will be reimbursed at the full statutory rate that is paid to other state employees, essentially requiring our judges, staff, jurors, and witnesses to subsidize state government.

We've cut back on supplies and equipment. We've done it in small ways, cutting back on supplies wherever we can, and we've done it in bigger ways, with a lot of courts not replacing old office machines and canceling equipment maintenance contracts, even though this can't be a

long-term solution. Not surprisingly, it's already causing problems in some courts when the machinery fails.

But we've found the courts can't really save enough money by cutting costs in equipment and supplies. Providing justice is a personnel-intensive kind of work. Between 90 and 95% of each court's budget is in personnel.

So we've had to cut personnel expenses drastically, by freezing hiring, by delaying replacements, by not filling vacancies at all, and by outright layoffs. These personnel cuts have had a lot of downsides. The lack of personnel in the District Court clerk's office in Albuquerque got so severe that lawyers and citizens had to wait in long slow lines just to file a document or check a file, and it could take two weeks or more for a filing to get before a judge to even look at. The only solution possible within our reduced budget was to lay off another dozen employees who were doing important work throughout the court, but we had to do it to get the money to hire more entry-level clerks to keep up with the work that was coming in the door, and to set up night shifts to process the filings.

We've tried to avoid the superficial solution of sending workers home without pay, a practice that is euphemistically called furloughs, because we need them at work. Without people at work, the courts have to close. That violates the state's constitutional obligation to keep the doors of justice open. Spacing it out a few hours here and a few hours there is just violating the constitution on the installment plan.

But the practical reality is this: Furlough closures of backlogged courts don't save a dime for the taxpayer or for the government. It's not like a furlough closure of a museum or a park or a tourist train, where you can actually save money by cutting services to the public on a given day. The work of busy courts just gets even more backed up and still takes the same resources, the same employee time, the same expense to process. That murder trial or DWI sentencing or custody hearing or even the paperwork processing doesn't go away. It's a case of pay me now or pay me later. Furlough closures of the courts are actually even worse than just delaying the inevitable, because not only do they not really save money in the long run, they also delay justice. Anyone who's ever had a case before the courts understands the truth of the old saying, "justice delayed is justice denied." How can we tell people who need immediate access to the courts, "Sorry, we're out of money and there's no justice today"?

A few months ago, despite all of our cost-cutting, some courts had to actually start furlough closures, and we were faced with imminent closures of two-thirds of the courts around the state. I'm proud to say that our judges statewide decided to share the financial burden with their employees voluntarily, and to reduce the time that citizens were locked out of access to their courts. At the last minute, we received enough federal stimulus money to make it through the fiscal year, but as you know, that resource is gone.

While we've worked on slashing costs, we've had to be guided by the principle that a lot of government functions are important, or desirable, or meet real needs of the people, but some functions are even more than that—they're so fundamental to our form of government that they're set out in black and white in the constitution.

So we've had to cut back on important programs to keep the doors open to do the work the constitution requires us to do. Let me give you one example, our DWI and Drug and other problem-solving courts. They go beyond traditional court functions of applying the law and deciding guilt and punishment. These courts actually work on changing behavior that's dangerous to the people who engage in it, behavior that's dangerous to all of us and our families. Those programs have been shown over and over again to work, as you can see in the reports that are distributed around the room, as well in hundreds of national studies. People who don't go through these programs are four times more likely to spend the rest of their lives in and out of our state's courts and jails and prisons, at least until they kill themselves, or innocent people who end up in their paths. We want to keep these programs working, even though the constitution doesn't say we have to run them. But to keep our doors open to do the things the constitution does say we have to do, we've had to cut back on problem-solving courts, we've cut needed personnel, we've reduced the numbers of people helped, and in some cases we've even had to eliminate whole programs.

These cuts may help us survive within our court budgets, but they don't really save money for the taxpayers who pay the bills. You can see in black and white how cuts in the DWI and drug courts increase costs for prisons and jails and law enforcement and public defenders and CYFD and other tax-funded agencies. Even apart from the dramatically different repeat offender rates, the cost to lock someone up and feed and house and guard them is over \$40,000 dollars a year; the yearly cost for a drug court client is seventy-five hundred.

And there are costs beyond the monetary ones that we have to think about. How do we measure the dollars and cents value of not having so many addicts climbing in the windows of our homes in the dead of night or not facing the nightmare of seeing the headlights of a drunk driver speeding toward us on the wrong side of the highway?

Another example of the effects of focusing only on court expenditures instead of bottom-line taxpayer impact is in the cost of providing room and board for prisoners waiting for delayed court hearings. It's happening all over the state. The Bernalillo County government figured out they'd save money and reduce their overcrowded jail problem if they used county money to pay for pro tem judges and prosecutors and public defenders to have quicker probation revocation hearings than the state justice system was able to schedule. So we sat down with the county and worked out a way for that to happen. It's already a success for the county and the court, with over 400 cases disposed of in just the last two months. But the bottom line is that we really haven't saved the taxpayers a penny by having the expense channeled through the county treasury instead of the state treasury, and on principle, funding the state courts really isn't the county's responsibility.

On the bright side, in addition to keeping our doors open, we've found ways to increase revenue to the state through credit card use, collection agencies to go after wrongdoers who won't pay, and new warrant enforcement approaches.

These are just some of the things we've been doing to cut costs, increase revenues, and keep our doors open on a day-to-day basis, and I have to say that our judges and staff all over the state

have done an extraordinary job of making the sacrifices necessary to keep justice alive, no matter how tough it's been. But I want to talk now about something even more important, and that's the long-range view.

We're brainstorming every possible way to operate a constitutional justice system better and faster and more economically, and we're willing to give up old familiar ways to do it. We've been expanding the use of videoconferencing for such things as meetings, arraignments, and other proceedings. We're installing and training our people in a new kind of statewide case management system where information is being completely computerized instead of being buried in paper court files and where it can be accessed instantly from the judge's bench and other locations. We're now setting up remote electronic filing, so you can file documents or get them remotely 24 hours a day without having to go stand in line at the court and so court staff won't have to spend so much time handling the papers. In fact, if someone wants to come to the court and file a paper document, we scan it and put it into the electronic system and don't have to deal with the paper any more. Anyone who wants a paper copy can just print it off.

We're working with DOT and law enforcement and other agencies to coordinate electronic citations, so instead of an officer having to fill out a paper citation and later drive it to a court and have the court process the paper and send it off to other agencies, with all the mistakes and time and expense all that can involve, an officer instead will enter the citation into a computer in the patrol car, hit the send button and have it instantly in the computer systems of the court and other agencies that need it, without further processing on either end.

None of these things I just described is a futuristic fantasy. They're all now being set up around the state and they'll be operating everywhere by the end of next year. A year or two down the road, we won't have to pay for people to do all the paper handling we have to pay for now.

We've been open to any new ideas that may help. Over a year ago, we started asking for input from judicial employees throughout the state, and we've put a lot of good suggestions into practice. Last year, we reached out to the National Center for State Courts, and asked if they would use their expertise and their federal funding to work with us. With their input, we've created our own ad hoc Judicial Reengineering Commission, similar to the Legislature's Government Restructuring Task Force that studied other parts of government. The Commission has representation from the judiciary, the Senate, the House, lawyers with civil and criminal and prosecution experience, and even from the business community. We've invited the Governor to name a member. The Commission has already had three meetings with the National Center's study team, and we're trying to come up with better ways of doing things, no matter how new or unfamiliar.

I read Senator Eichenberg's concerns last week about the resistance to change your Restructuring Task Force has met, and I think we're already overcoming that kind of resistance. We've committed ourselves to the proposition that no idea, no potential change is off the table. At the Commission meeting last week, Senator Payne suggested some modern electronic communication techniques that he learned from his military experience as a Navy Admiral in the hot zones of the Middle East. The Commission is scheduled to complete its work in a few more months, and we'll be able to report the results to you by next session, both to tell you of the

improvements we've been able to accomplish on our own, as well as any statutory or constitutional changes we may need.

There's more that I'd like to report to you, but I'll have to do it in other ways. Before I finish, I want to mention briefly our immediate needs for this session. We've prepared a one page summary that's been distributed around the room, and we'll be discussing these items as the session goes along. Most involve legislation that'll make us more efficient, and that'll help in collection of revenue for the state.

But our highest priority this session has to be to make sure we have the resources necessary to keep the doors of justice open and to do the job we have to do. We're working with just 75% of the judges we need. We need 30 more judgeships, but we're not asking you for them. We critically need 10, but we won't ask you for those, either, because we honestly think we can struggle by without them this year. We do need one, though, because it's literally a case of life or death for the justice system in part of our state. The 8th Judicial District, which includes Taos, Raton, and Clayton, and has just two judges, can't make it without at least one more judge. It has the greatest imbalance in the entire state between the number of judges and the workload. That imbalance is made worse by the geography of the district, with one judge based in Taos and the other in Raton, which means that when one is taken off a case, the other judge has to leave his own courthouse and caseload and travel to another city to handle the case, expending even more time and money and leaving his own caseload behind. Cases aren't getting heard in a timely way and some aren't getting heard at all. We're now hiring retired judges to go in and try to help and essentially bail water, but that's not cost-effective, it's not a long-term solution, and it's not even enough help in the short term. I've been up there personally a number of times this year, meeting with both of the judges and with prosecutors and public defenders and civil lawyers and it's clear that we're putting band-aids on a heart attack. We have to ask you for this one solitary judgeship, and we're willing to do without most of the usual support expenses, if that's what it takes. We owe it to the citizens in those communities to make sure the constitution's guarantee of equal protection of the law and our pledge of allegiance to the concept of "liberty and justice for all" includes them, too.

I'm convinced that all three branches of government are trying to meet the financial challenges in responsible ways, even if those ways sometimes differ. In the process, it's important that we share our insights with each other and that we listen as much as we speak. It's going to take a lot of serious thought and a lot of hard work, but I'm confident that we'll work together in the interests of the people of New Mexico. And I'm convinced that we will all do whatever it takes to make sure the flame of justice never dies. Thank you all for your service to the people of New Mexico.