

The State of the Courts: Building Tomorrow's Courts Today  
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Address to the City Club of Salem  
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Governor Kulongoski, members of the legislature, judicial colleagues, members of the bar, members of the City Club, ladies and gentlemen, thank you all for joining me here today.

I 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 third as Chief Justice. Next Monday, as Oregon's 75th Legislative Assembly convenes, we will hear from Governor Kulongoski, and from the leaders of the legislative branch. As the leader of Oregon's Judicial Branch of government, I appreciate this opportunity for my branch to have the first bite at the apple.

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.

I would like to begin by thanking Governor Kulongoski for being here today, and for his ongoing support of the Judicial Branch of government. I think everyone knows he has been elected to positions in all three branches of government, and his experience and judgment have served Oregon well.

In my address I will describe some of the accomplishments of Oregon's courts today, discuss the strategic priorities for the Judicial Branch and conclude with how the decisions made by the upcoming legislature might affect those priorities.

### Oregon's Courts Today

The mission of Oregon's state courts is to provide fair and accessible justice services that protect the rights of individuals, preserve community welfare, and maintain the public's confidence in our justice system. I am pleased to report to you that the 1,900 staff and nearly 200 judges of Oregon's state courts strive every day to fulfill that mission, and that they continue to provide quality and effective justice services to Oregonians.

In that regard, I want to again express my profound thanks and respect to those employees and judges of the Judicial Branch for their daily commitment to justice and their service to every person who enters our courthouses. I also want to publicly thank State Court Administrator Kingsley Click for her tireless work on behalf of the Judicial Branch.

Let me first report on some of our many accomplishments that I described to you last year, and that hold true today:

- Oregon courts accepted more than 600,000 new cases in 2008, ranging from traffic violations and small claims cases to complex commercial litigation and aggravated murder cases in which the death penalty can be imposed. That represents about one case for every six Oregonians.

- Despite that massive influx of cases, our preliminary data shows that we have successfully reduced the number of pending cases. This occurred despite the increasing complexity of many of the cases now coming before Oregon's courts, a phenomenon that reflects the complexity of our society and its many problems.

- Last year I described the success of Oregon's drug courts and other problem-solving courts. I am pleased to report that we continue to see very low recidivism rates from these specialty courts, and that their success has been acknowledged by legislative support for drug courts. Let me give you two quick examples of the impact of these courts.

- One illustration of this is Measure 57, passed by voters in November. Although that measure increases criminal sentences, it also mandates increase state funding for drug courts.

- This week I attended the funeral of former Yamhill County Circuit Court Judge Carol Jones. Two young women who graduated from her drug court said in that service that Judge Jones had "saved their lives." That is a very human testament to the effectiveness of these courts and the commitment of the judges and staff who administer them.

- I am very pleased to report that the Judicial Department is on track to collect a record \$287 million in this budget period. Although that amount is equal to about three-fourths of the Judicial Department's General Fund budget, our courts do not directly benefit from those collections. Instead, the funds we collect from court-imposed financial penalties go to the state General Fund, to special funds that train police officers and provide services to crime victims, and to support local government services. About \$27 million of those collections will be distributed to victims of crime for restitution and other money owed to them.

- Oregon's judges continue to provide leadership in their communities and beyond. When Oregon's timber counties faced dramatic reductions in public safety services, Oregon's presiding judges built on the work done by the Governor's Timber Task Force by convening local public safety officials to ensure communication and leadership in the local justice system. Judges at each level of courts continue to work with a bi-partisan group of legislators and executive branch representatives to improve Oregon's dependency system, and ensure the protection and well-being of Oregon's most vulnerable children.

Let me close this section of my address by updating you on the three priorities I outlined to you last year. First, we have successfully initiated Oregon's eCourt program. When Oregon eCourt is fully implemented, Oregon will be the first state in the country to have a statewide electronic courthouse. Oregon eCourt will expand and simplify access to courts, allow electronic document filing and electronic payment of court fees, provide crucial information to support evidence-based decision making by judges and managers, make court work processes more efficient, and improve the availability of information that courts share with our justice partners and stakeholders.

Second, as important as building this "virtual or electronic courthouse" is, taking care of our physical courthouses demands equal attention. In partnership with the legislature, the counties

and the Oregon State Bar, we have taken important first steps to address glaring deficiencies in Oregon's court facilities. The 2007 legislature created an interim Committee on Court Facilities, which has identified the seismic, safety, and other improvements needed in Oregon's 48 state court facilities. That legislative committee met two days ago to approve its final report to the 2009 Legislative Assembly. I am optimistic that the 2009 legislature will adopt a long - range plan that I have proposed to prioritize and fund these urgently - needed improvements. In that regard, I urge the legislature to include court facilities as public works projects in the infrastructure stimulus package they are developing.

The third priority is judicial compensation. In 2007, Oregon's judges were the lowest paid of any state and had not received a pay increase or cost-of-living adjustment in seven years. The 2007 legislature took a significant step to address the issue, and I again thank them for that. The Public Official Compensation Commission established by the 2007 legislature has recommended an increase to get Oregon's judges closer to the median salary of the 13 western states, and I thank Governor Kulongoski for his public support and for including those recommendations in his budget. Despite our current economic difficulties, obtaining adequate judicial compensation must continue to be a budget priority in order to attract and retain high - quality judicial candidates from all areas of law practice.

#### Strategic Priorities: Oregon Courts Tomorrow

I now would like to talk about the Judicial Department's vision for the future of Oregon's courts, and our strategic priorities to create the courts of tomorrow. In this upcoming legislative session, many of the accomplishments I just noted could be at risk, and it is critical for people to understand why Oregon cannot afford to dis-invest in its state courts.

Later this month we will release our five-year strategic plan.

The strategic planning process identified five Judicial Branch goals:

1. Ensure public access to court services.
2. Maintain the public's trust and confidence.
3. Help people choose the best way to resolve their disputes.
4. Build strong partnerships in our communities, and
5. Effectively administer our courts so they work for people.

Our first goal is ensuring the public's access to court services. That goal means that we must be available for all persons – not just those who can afford it -- to obtain decisions and solve problems in a public forum that allows community input through juries or elected judges. In that regard, we have initiated eCourt, identified access barriers in our court facilities, are addressing financial and language barriers to court services, and have an active program to assist the growing number of self-represented litigants – which includes at least one party in 86 percent of Oregon's marriage dissolution or separation cases.

To maintain the public's trust and confidence – our second goal -- we strive to be a transparent and accountable branch of government. That means that we are committed to being careful

stewards of public resources, excellent producers of our assigned work, and that we continue to reach out to all parts of Oregon so our citizens better understand what their courts do. The Supreme Court and Court of Appeals continue to travel throughout the state to hear oral arguments in high schools, community colleges, state universities, and all three law schools.

We also demonstrate our accountability through an established set of judicial performance measures.

With regard to performance measures, I would be remiss if I did not again publicly congratulate Court of Appeals Chief Judge David Brewer for receiving the 2008 Distinguished Service Award from the National Center on State Courts. Judge Brewer led Oregon's effort to develop appellate court performance measures, and was instrumental in developing a national model through the National Center for State Courts.

Our third goal is helping people resolve their disputes. We accomplish that goal by providing a range of alternatives – from mediation, to jury trials, to the specialty courts I discussed earlier – in order to meet the needs of the parties for an appropriate, timely, and public forum to resolve disputes.

Building strong partnerships – our fourth goal -- recognizes that although we are an independent branch of government, we must work in concert with many partners to respond to the needs of the communities and the people we all serve. In that regard, judges are encouraged to be active members of their community, contributing their knowledge and leadership within the appropriate bounds of judicial impartiality.

Our fifth and final goal -- enhancing judicial administration -- means making sure our presiding judges, trial court administrators, and other professionals have the training and skills they need to effectively manage the resources and authority entrusted to us and to function as a modern court of law.

### The Role of the Courts, and Decisions to Come

The goals established in our Strategic Plan that I have just described are a tangible demonstration of our commitment to accountability in the Judicial Branch and they are an integral part of achieving our vision for the future of the courts. On Monday, when the 75th Oregon Legislative Assembly convenes, we will take the next step in the process of asking Oregonians to join in that vision. So let me now describe the decisions the 2009 legislature will be making.

I am sure everyone here is aware of the grave economic situation that the legislature faces. I want to emphasize to everyone that being an equal and independent branch of government does not immunize the courts from these budgetary realities (let me repeat that). As a responsible partner in government we accept our obligation to share in the reductions that must be made to balance the state budget.

However, Oregon's courts are the legal equivalent of the emergency room. We do not control what comes through our doors. We rely on highly-skilled professionals and modern technology to accomplish our work, and we need safe and adequate facilities in which to work.

People come to us when they are in distress or have urgent problems that need to be resolved quickly and fairly, so time is of the essence. If courts do not or cannot do their jobs, then many costs are transferred to others.

When the economy goes down, the need for court services is likely to go up. If people without jobs turn to crime, they come to our courts. If they steal, physically assault or sexually abuse others – whether it's their children, their spouses, or strangers – they come to our courts. If they abuse drugs or alcohol, they come to our courts. If they seek to establish or modify child support orders, they come to our courts. And if their homes are foreclosed, if they are evicted from their apartments, or are sued for failing to pay their obligations, they come to our courts.

We cannot ignore these problems when they come to the courthouse -- our constitution, our statutes, and our consciences all require that our courts be able to resolve these issues in a fair and timely manner.

Currently, our courts are responding with energy and innovation to the increasingly complex and difficult problems that need judicial resolution. That energy and innovation, along with our careful management of public resources, can provide some shelter during a budgetary storm. However, we are not stopping there.

At my direction, the Judicial Department already has identified how we can reduce General Fund expenditures by \$3.9 million, which is about five percent of our remaining General Fund budget. This is consistent with what Governor Kulongoski has directed the executive branch agencies to do, and what I anticipate the legislative branch will do. This is an important contribution that we can make, but is not something we can automatically absorb or carry forward into the next budget period. That is why I will be working with our justice system stakeholders and the legislature to identify other longer - term strategies and approaches for 2009-11.

I have directed Judicial Department staff to revise our plans to implement Oregon eCourt so that we can bring more benefits to more court users sooner and reduce our eCourt Certificate of Participation requests for 2009-11 by up to 50 percent – about \$20 million. Although that strategy will postpone replacing our internal case management systems and will defer some work efficiencies until later years, I believe it is an appropriate contribution to make in this time of fiscal distress.

I have again asked our United States Senators and Representatives to support federal legislation that would allow Oregon to intercept the federal tax refunds of people who have not paid their financial obligations ordered by state courts. The federal government should be an active partner in collecting court - imposed obligations, and not passively return money to people who have not paid their fines and fees. We already can attach state tax refunds for these purposes. Creating that same authority at the federal level would generate up to \$61 million a biennium with minimal cost and without interfering with child support and other payments. That amount alone

is enough to make up for the Judicial Department budget reductions called for in the Governor's recommended budget and still return tens of millions of dollars to the State General Fund. Congress should help support struggling state and local government budgets and help hold criminal offenders and other people accountable for court - ordered payments.

We are constantly looking for additional ways to increase the collection of the more than \$1 billion in outstanding court-ordered payments. We will be offering to the legislature innovative approaches to supplement the Judicial Department's budget and the state General Fund by improving our collections.

And finally, we are developing proposals to expedite both the most complex and most simple business litigation lawsuits. For simple cases, we are working on a fast-track process in which the parties can agree to a streamlined motion and discovery process. Jury trials could occur within four months on these numerous, but relatively simple, cases. We also are looking to expand statewide the model Commercial Court from Lane County. Both of these actions would increase the speed with which these cases are resolved, and make the process more cost - effective for the parties and taxpayers.

These are just a few of the actions we have taken to address the state's budget situation. And although I understand why the Governor and the Legislature call on the Judicial Branch to share in state budget reductions; I would caution against a unilateral approach that confuses across the board cuts for everyone with providing equity. We will provide alternative policy choices for the delivery of justice system services, however, the Judicial Branch must have an adequate budget.

Like the legislative branch, the vast majority of our costs are for people – they are not pass - through funds. But the nature of our constitutionally mandated duties limits the reductions the courts can absorb. The Constitution creates the courts as a check and balance – an integral part of government accountability. The courts are responsible for ensuring that public officials meet their legal responsibilities -- we review decisions made by the legislative and executive branches to ensure they comply with our Constitution and statutes – and we must have the capacity to fulfill our responsibilities.

Like the executive branch, we provide many different kinds of direct services to Oregonians. However, unlike much of the executive branch, many of the services we provide are required by law or have legally - mandated timelines. In short, we are not just expected to be timely and fair – we are required to operate that way by the Constitution and by statute.

I make these comments on the eve of the legislative session to explain in advance why we need a high level of communication, cooperation, respect, and understanding with the other two branches of government during these trying economic times.

I very much want to avoid the situation the Judicial Branch faced just six years ago, when the Judicial Department lost the equivalent of one - fourth of its staff, which forced my predecessor to close courts one day a week, reduced work hours for the remaining employees, and delayed processing some types of cases.

We did that to respond to deep, but short-term, cuts. We knew that in six months we could begin catching up. However, we don't have that luxury this time.

The decisions the legislature will make in the coming months will establish the level of court services for at least two years, and possibly longer. I pledge to you, Governor, that we will work closely with you and the legislature so that informed decisions are made that acknowledge the role of the courts—both as a responsible member of state government and as an equal branch of government.

To give you some context to the budget discussion, the Judicial Department constitutes about two-and-a-half percent of the Governor's Recommended General Fund budget for 2009-11, and less than one percent of the total funds budget for the state. That is \$88 in General Fund for every Oregonian – less than one dollar a week.

Our discussion with the legislature will emphasize that not sufficiently funding the courts will do little to balance the state's budget and often will simply transfer the cost to other parties. If we no longer compensate people who serve on our juries, then they bear the financial burden of time off work and traveling to the courthouse. If we do not verify that people are eligible for court-appointed counsel, then people who could pay for their own attorney get a free ride from taxpayers and use scarce state funds that could be better spent elsewhere.

If we don't approve appropriate placements for abused or neglected children, then they suffer from endless placements in our foster care system or may be subjected to additional abuse and neglect. If we don't adjudicate suspected criminals, then they threaten our citizens or clog up our jails. If we don't have drug courts, addicted offenders will commit more crimes. If we don't assist self-represented litigants, then they slow down other cases pending before the court. And if we don't interpret contracts and enforce financial obligations, then our already stumbling economy slows down even further.

As an aside, I also would ask that the legislature ensure that all parts of the criminal adjudication function – prosecution, the courts, and indigent defense – be funded in balance so the justice system can function properly.

In addition to these cost transfers, the potential impacts of severe budget cuts to our courts could go beyond temporary problems and could threaten some of the fundamental principles of our society. We have seen other states taking actions that we must avoid here in Oregon. New Hampshire has postponed jury trials because of budget cuts. The judicial branch in Utah has eliminated all their court reporter positions – something we did in the last budget crisis - and in collaboration with their governor, which has chosen to leave some judicial positions vacant. That would be very difficult to do here when a State Bar task force report again has shown that we need 13 more trial judges just to keep pace with our existing workload.

Drastic budget cuts might mean we must stop accepting cases or postpone processing them – and we all know that justice delayed is justice denied. More than 70 Oregon laws create specific deadlines or establish priorities for court actions in various types of cases. We must issue timely

ballot titles, speedily establish placements for dependent children, and meet a variety of criminal law deadlines to review charges and hold criminal trials.

Although the Judicial Branch values its independence, we also recognize our interdependence. We recognize that children depend on us for timely placements, and that the public depends on us to impose sentences and sanctions on criminal offenders. We know that businesses and consumers depend on us to enforce financial obligations and the rules of our economic system. And we know that dozens of state agencies and local governments depend on us for funding, and thousands of individual victims of crime depend on us to collect financial obligations owed to them.

The indispensable role that our courts play in our system of government, one that is based on the rule of law, is the reason why I will be working closely with the legislature and the Governor to avoid turning our courts into case processing machines. That means I will be advocating for adequate resources to meet our statutory and constitutional obligations.

It means that I will support the court's role to collect court-ordered financial obligations that provide hundreds of millions of dollars to the state, to local governments, and to victims of crime. It means that I will support appropriate revenue strategies such as the federal tax intercept that maintain judicial integrity and protect access to the courts.

It means that we will continue to implement Oregon eCourt, but will reduce our budget request and defer our own technology needs to meet the needs of the public first. It means that I will support creating a long-term improvement plan for safe and secure court facilities, and continue to advocate for judicial salaries that acknowledge the responsibility of the courts and the need to attract and retain qualified candidates from all areas of law practice to serve on the bench.

It means that I will support Oregon's drug courts and other treatment courts, and look to create a statewide commercial court to bring similar benefits to cases having large-scale financial impacts. It means that I will support mediation and other forms of alternative dispute resolution that prevent the cost and delay of jury trials.

I hope that you and other Oregonians join me in that support. Because if our courts fail, or if we fail our courts, we risk losing respect, not just for government, but for the law itself. That is something we all agree that Oregon cannot afford.

Thank you.