

State of the Courts
Chief Justice Paul J. De Muniz, Oregon Supreme Court
Address to the City Club of Salem
January 7, 2011

I. Introduction

Good afternoon. Members of the Legislature, my judicial colleagues, members of the City Club, members of the Bar, distinguished guests, ladies and gentlemen, thank you for being here today.

I want to thank the Salem City Club and the Marion County Bar Association (of which I have been a member for over 30 years) for co-sponsoring this event and again providing the venue for me to speak to Oregonians about the state of their courts. As we have done in the previous four years, my remarks are being streamed live to each courthouse in Oregon so that every Judicial Department employee and judge in this state has the opportunity to watch and listen to my remarks along with you.

Before I begin my prepared remarks, I want you to know that in recognition of the ongoing state budget reductions, my speech to you today will be 20 percent shorter than last year's address - I hope that's enough!

On a serious note, I would like to welcome Justice Jack Landau to the Oregon Supreme Court. Justice Landau already has had a distinguished career on the Oregon Court of Appeals, and his election to the Supreme Court makes a splendid addition to our bench. I also would like to welcome Judge Lynn Nakamoto to the Oregon Court of Appeals, and locally, Marion County Circuit Court Judge Dale Penn.

Also, although Governor Kulongoski could not be here today, I would like to acknowledge and thank my former colleague for his steadfast support of the Judicial Branch during his two terms as Governor. Governor Kulongoski's support for the Judicial Branch in this state has no parallel in any other state, and he has appointed many quality people to the bench during his administration. My thanks are not just because of his service in the judicial branch-or in all three branches of government, but because his actions reflect his understanding and honoring of the unique and critical role of each branch. Please join me in recognizing our Governor for his service to all Oregonians.

II. Status of 2010 State of the Courts

Let me begin my formal remarks by updating my report from last year. I said then that the courts had been weakened by budget reductions and furloughs. That remains true - we cut an entire division from the Office of the State Court Administrator, and we have no staff to develop and monitor performance measures or support our proven and innovative programs such as drug courts. We are a weaker branch of government.

I said then that the courts of the future would rely on technology to remain open and accessible to Oregonians. I am pleased to report that our Oregon eCourt program has been implemented for

small claims and landlord-tenant cases in five pilot courts. In those courts, we have processed nearly 35,000 cases in electronic files, which means we have not had to store, locate, retrieve, and continually update a stack of paper files that would measure about 720 feet tall-which is more than four times the height of our State Capitol. Now we are negotiating with a technology company to _bring Oregon eCourt to all trial courts in the state.

I said then we must maintain our civil justice system. Civil case filings have increased since my last report, and our two initiatives implemented to expedite civil jury trials and to put our most experienced judges on complex civil cases are up and running.

I emphasized then the need for adequate courthouse facilities. All of the courthouse safety and health improvements funded by the last legislature are underway, and today I regrettably am missing the groundbreaking for a new courthouse in East Multnomah County – a project years in the making, and one that will make justice more accessible there.

I also talked then about the need for better communication and collaboration among the three branches of government. I am very pleased to tell you that your elected officials in the Legislative and Executive Branches responded to that call. We have transformed the conversation about the Judicial Branch budget from 'what can we cut?' into 'what must we fund?' As I will elaborate later, maintaining those relationships in the months and years ahead will be critical for all Oregonians.

And finally, I pledged then to a process of open courts management, where courts are accessible, are transparent in their functioning, are accountable, and are engaged with the public they serve. We have been true to that promise.

III. The State of the Courts in 2011

So let me now turn to the new year. As we now know, the budget crisis that presented itself in 2009 and 2010 has evolved into a decade of budget deficits. The responses that Oregon had for a short-term budget crisis - unpaid furloughs for staff, not filling vacant positions, and cleaning out savings accounts - do not work to address long-term issues.

Last summer I visited all 27 judicial districts in this state in an effort to speak to as many of our employees and judges as possible. I wanted them to hear from me directly- face-to-face, on as personal a level as possible -- how I view this crisis. I explained to them - as I will try to clearly and concisely explain to you now -- the strategy and vision that our branch of government has employed and will employ in the future to deal realistically with the state government funding crisis that plagues us now and will be with us, in my view, for the rest of this decade.

As I did in each of those courthouse visits -- whether I was talking to three employees in Wallowa County, or one hundred in Multnomah and Washington Counties -- I again want to acknowledge and thank all of our employees and judges throughout the state for the extraordinary effort they deliver day in and day out to maintain an open and accessible justice system for Oregonians. A justice system that unlike a number of other states across the country is open eight hours a day, five days a week, to deal with seemingly intractable human problems that

require a timely resolution, be it a child needing immediate protection, a family in crisis, the ravages of drug use and crime, or enforcing economic and property rights.

What the Judicial Department employees throughout this state have done this last year to provide timely justice for Oregonians is truly remarkable. Although they have the same number of unpaid furlough days as the Executive Branch, your state courts are open every business day. There are no statewide closure days in the Judicial Branch of government - we are open and accessible.

As proud as I am of the remarkable dedication our employees have demonstrated, my personal visits to all those courts has convinced me that our branch of government is now at the tipping point. I know from my visits that our employees are stretched to the limit and in some cases beyond.

Having fewer staff has forced courts throughout this state to reduce public service hours, including here in Marion County. Clerks cannot spend as much time helping people find the correct form or fix mistakes. Lines at our counters are longer, and errors are starting to creep in.

In addition, judgments and warrants are taking longer to enter. Why is that important? Timely entry of arrest warrants are important because that is what gives police the legal authority to take a wanted person into custody. And if a warrant is not removed promptly, then someone might be arrested for an invalid reason, which results in an unnecessary invasion of privacy for the person involved, and might result in a costly lawsuit against a police agency -- creating yet another burden on taxpayers. If a judgment creating a lien on property has been signed but not entered, then people buying property are not aware of encumbrances on that property and creditors are not able to collect their legally-established debts.

These are just a few of the hidden - and sometimes not-so-hidden - costs of our current budget reductions.

In the Judicial Branch we recognized some time ago that our state government likely would face dramatic budget deficits for some time. In response, our branch formed the Court Re-engineering and Efficiencies Workgroup, or CREW (because - as you know - everything in government needs an acronym). Its task- to re-engineer our court system by identifying alternatives that will dramatically increase efficiencies and allow courts to operate on less revenue, while maintaining or improving the delivery of judicial services.

CREW's first step was to survey all judges and staff for ideas on what we can do better, or stop doing all together. We received 1,400 suggestions- and I read every one of them. A number of those suggestions already have been implemented.

Our next step in re-engineering our court system was to ask hard questions of ourselves about what we do, why we do it, and how we do it. We are looking carefully at our administrative structure, our case management, and the statewide use of our judicial resources. We are critically examining the traditions, the culture and the processes that we have developed - and have accepted - for over 150 years. That is not an easy undertaking for an institution that believes in

precedent, the rule of *stari decisis*, and that has a commitment to respond to the needs of individual communities.

Instead of wringing our hands and focusing on this fiscal drought only as a crisis, our branch of government has chosen to embrace our circumstances as an opportunity to improve our productivity and efficiency. I will provide a report to the governor and legislature on our re-engineering efforts, which are focused on four strategic areas:

1. Centralization: We are looking at how we can save time and money by processing our payables, collections, traffic citations, and jury management functions centrally instead of through 27 separate judicial districts.
2. Regionalization and Statewide Use of Judicial Resources: We are breaking down artificial barriers created by county lines. Through technology, available judges in any part of the state should be able to handle many kinds of cases and hearings in any other part of the state. And, through our new Oregon Complex Litigation Court, judges experienced in civil litigation can be assigned complex civil cases without regard to the county in which the case is filed. In other words, we are now bringing the judge to the case, not restricting the handling of cases to the bench in the county in which it was filed. We also are looking at increased use of video arraignments, and centralizing the adjudication of prisoner post-conviction lawsuits.
3. Leveraging Technology: We currently are expanding our use of electronic notices instead of paper copies, transmitting voluminous child welfare reports to judges and citizen volunteers electronically, and transmitting case files electronically when cases are appealed. We are working with the Oregon State Police so they can electronically file thousands of traffic citations throughout the state.
4. Redistricting and Venue: We are studying whether we can reconfigure our judicial districts to maximize judicial resources, personnel management and staffing and the delivery of trial court services.

In assessing these options, we are looking through the lens of the litigant, and use four guiding principles. Successful ideas must:

1. Promote convenience for litigants;
2. Reduce the cost and complexity of judicial processes;
3. Maintain or improve access to justice; and
4. Improve case predictability for litigants.

However, the efficiencies and technology-related changes that I have just described are only

minor and interim steps to having the first-in-the-country statewide electronic court system - Oregon eCourt. When fully implemented, the public will be able to access any Oregon state court, 24 hours a day, seven days a week. Cases will be filed electronically, and court staff and judges will work with paper only when they need to. Our courts will no longer need to create, maintain, and store the millions of pages of paper that is part of our annual workload.

In addition, fees and fines can be paid online, case documents and schedules will be available online, and our judges will have comprehensive and up-to-date information in making decisions about the individuals and families appearing before them.

This is just a glimpse of what our future can be, as we move our trial courts into the web-based world of today's technology environment that now is commonplace in much of the private sector. However, we must have Oregon eCourt available in order to implement not only these changes, but many of the cost-saving re-engineering concepts we are reviewing. And that leads me back to the working relationship among the branches of government.

The future not only of Oregon eCourt but literally our entire system of justice rides on the policy and budget decisions that are going to be made by the Legislative and Executive Branches starting next week, as the Governor and legislature begin to balance the state budget, as required by the state constitution.

In my view, it is time for all three branches of government to be fully engaged in this process of defining the priorities of this state.

Thus far, all three branches of government have held positions vacant and called them savings instead of service reductions. We have cleaned out the cupboards, swept the change from under the cushions, and thinned the soup. We have accepted gifts from Uncle Sam, who no longer can afford to be as generous with us.

We have taken across-the-board reductions that treat all programs and services equally.

Those might be appropriate actions to address a small-scale or short-term budget problem, but it begs the question when looking at a decade of deficits.

At this time, the Legislative Branch has enhanced its ability to fulfill its constitutional role by receiving voter permission to meet in annual sessions. The Executive Branch has worked on agency transformation projects and is proposing to reset state government. And as I have described, the Judicial Branch is re-engineering itself.

Now is the time for the leadership in each branch of government in this state to come together, to identify and agree on the irreducible core functions of our state government, to establish a budget consistent with those core functions, and then manage each branch to achieve the desired outcomes.

Let me make two final points about why the Legislative and Executive Branches should view the adequate funding of the Judicial Branch at the same priority as the education of our children, the

health of our children and families, and the public safety of our communities.

First, of course, there is the legal argument. We need to avoid being in the same situation as the State of New Hampshire, where a group of unrelated litigants is suing the legislature to restore funding to the courts so they can get their individual cases decided in a timely manner.

Although courts have inherent power to compel certain actions by the legislature, the Oregon legislature should not cast its fate to the wind and put the Judicial Branch in the position of having to decide for itself whether it has been funded at constitutionally adequate levels. That situation is an invitation to constitutional chaos, and can easily be avoided.

The second is a practical point. Courts should have funding priority because courts stand at the intersection of every important social, political, and legal issue in this state.

If you are a student of Oregon history, you might know that many of the hallmark laws that define our state - public beaches, the bottle bill, land use planning - all are in place today because they were upheld by the courts.

If you are an education advocate, you know that in 2009 a group of school districts came to the courts asking whether the Oregon Constitution required the legislature to fund K-12 education at a specific, mandated level.

If you are interested in human services, you know that no child is placed in foster care or returned to his or her family without a court's permission, and that courts oversee appointment of guardians and conservators for those unable to fully care for themselves.

If you are interested in public safety, you know that every day courts in Oregon protect victims of stalking and domestic violence, tum lives around in drug courts, and enforce the rights of crime victims and criminal defendants as courts adjudicate and sentence people who violate the law.

And if your priority is economic development, courts enforce economic and property rights every day by establishing legal authority to collect debts, interpret contracts, and regulate transactions between businesses and consumers.

If it's the state budget you care about, you know that any savings in the Public Employee Retirement System must meet constitutional standards. You might not know that tens of millions of dollars hang in the balance in a case now pending in the Oregon Supreme Court that will determine whether the State is entitled to receive a portion of a very large punitive damage award against a tobacco company.

Both of those points compel the conclusion that Oregon must return to the practice of having its policy dictate the budget, and not having the budget establish Oregon policy.

It is not a question of how much justice we can afford. Providing justice completely and without delay is the constitutional policy of this state, and our elected leadership must provide a budget

sufficient to carry out that constitutional mandate.

I stand before you today to pledge the best efforts of all of the judges and employees of this branch of government to make the best use of the resources given to us to serve Oregonians, and to continue to build and maintain the public's confidence in our state courts.

Thank you.