

2013 State of the Courts
Chief Justice Thomas A. Balmer, Oregon Supreme Court
Address to the Salem City Club
2013

I. Introduction

Thank you for that kind introduction. It is a privilege to be here at the Salem City Club to present my first State of the Courts address. I would like to thank the Salem City Club and the Marion County Bar Association for sponsoring this event.

The State of the Courts address is a tradition begun in 2006 by my predecessor as Chief Justice, Paul De Muniz, and I am pleased to be able to continue it. And I am particularly pleased to be presenting this talk in Salem.

Now in some future year, I might want to avoid the commute for a day and present my remarks before the Portland City Club – but I wanted to be in Salem today to emphasize the fact that the Oregon Supreme Court is a Salem institution. The courts are the third branch of government, and our home needs to be at the seat of government here in Salem. Of course, the members of our court can and do use conferencing capability and remote access to do our work from Portland and Eugene – and indeed from around the world – but one of the reasons that I think the Oregon Supreme Court works so well, compared to some other state supreme courts, is that we judges do all view Salem as our work home, we come to Salem regularly, and we meet face to face to discuss the cases before us – so it is fitting once again to present this address in Salem.

As in the past, this address is being streamed live to every courthouse in the state, so that our state court judges and staff can also listen in. So, welcome to our judicial branch colleagues around the state.

I want to begin today by thanking former Chief Justice Paul De Muniz for his tremendous efforts to guide Oregon's state courts the past six years. The longer I am in this job, the more I appreciate how truly extraordinary Paul's vision and energy are, and what a wonderful chief he was. Please join me in thanking him and wishing him well in his new endeavor at Willamette University College of Law.

I also would like to recognize and welcome my judicial colleagues who are joining us today, including my colleagues from the Supreme Court – including our newest Justices, David Brewer and Richard Baldwin – Chief Judge Haselton and other members of the Court of Appeals, and our Circuit Court Judges. In addition, I would like to recognize Representative Kevin Cameron, and thank him for his attention to court issues. Thank you for being here today.

And finally, I also would like to thank the judges and staff of the Oregon Judicial Department around this state for the tremendous work they do every day to serve the cause of justice and the people of Oregon. Their work is so incredibly important, and often difficult, and they perform their duties remarkably well.

Today I would like to share some reflections on my first few months as Chief Justice, discuss the state of Oregon's courts, and also talk about the attributes of a healthy state court system and what Oregon needs to do to try and get there.

II. Early Musings of a New Chief Justice

I began my work as Chief Justice in May – and eight months seems a little early to be reflecting on things, but on the other hand, we now live in a world where entertainers are writing their autobiographies before they reach the age of 25. (I used to think it was just rappers that did that, but I saw that Taylor Swift at the mature age of 23 is working on her autobiography.) So I don't suppose there is any harm in the exercise – and hopefully some good will come from it.

Because I am not a Salem resident, let me tell you just a little about myself. I grew up in Portland, went off to the Midwest for college and law school, started my legal career with a firm in Boston, and later worked for the U.S. Dept of Justice in Washington DC and then for a Washington firm.

In 1982 when I turned 30, I came to my senses and moved back to Oregon. I spent 15 years practicing law in Portland – with a wonderful four-year break working here in Salem as Ted Kulongoski's Deputy when he was Attorney General in the mid-1990s. I was appointed to the Supreme Court by Governor Kitzhaber in 2001 – and I've been elected and then reelected to this position (I would like to say that I was a great candidate – but in fact I didn't have an opponent either time). My wife, Mary Louise McClintock, is the early childhood program director for the Oregon Community Foundation, and we have two adult children, both of whom live – temporarily, we hope – on the East Coast.

Earlier this year, after Paul announced that he would step down as chief, I was elected by my colleagues on the Supreme Court to be Chief Justice for the next six years. And, although it pains me a little to say this, I am now the senior justice on the Oregon Supreme Court.

Outside of work, I play tennis, volunteer at the Goose Hollow Family Shelter in Portland, have served on the boards of Multnomah County Legal Aid and the Classroom Law Project, and was active in the Portland City Club until my commuter lifestyle made that impractical.

Being a member of the Supreme Court and then becoming Chief is something like being a player on a sports team, then suddenly being hired as general manager and head coach. All the things that you took for granted as 'just happening' are now your responsibility.

Before, I worried about writing the opinions that had been assigned to me – now I worry about who I can assign them to . . . and about getting our budget through the legislature, and bomb threats phoned in to 28 courthouses, and judges getting sued for doing their jobs, and magnetometers for trial courts.

You learn about all the issues – great and small – that are covered by Chief Justice Orders. Who even knew there was such a thing as a Chief Justice Order?

You continue to be a working justice – writing opinions and listening to oral arguments -- but now get to be jolted awake at night by the reality that 191 judges and about 1,600 employees think you have all the answers – and then you stay awake wondering why you don't.

You learn how many people and organizations have an interest in how the courts work – or why they think they aren't working as they should. And these folks range from disgruntled litigants -- who are convinced of a conspiracy that involves me, their local district attorney, Vladimir Putin and the Federal Reserve Bank – to legitimate concerns voiced by businesses, legislators, jurors and just regular citizens.

My e-mail traffic seems like it has increased by a factor of 10.

To try and get some perspective on all this, I researched Oregon's first Chief Justice – William P. Bryant. He was appointed by President Polk – Oregon was just a territory then – and arrived in Oregon City in March 1848. Within a few months, his health became impaired and he resigned, left Oregon, returned to Indiana, and soon after died. I hope my tenure as Chief is different.

But this is a terrific job, and I feel very fortunate to have been asked by my colleagues to do it. Helping the court system – this institution so vital to our society and our communities – succeed in its mission and serve our citizens is deeply rewarding. And I still get to spend the occasional Saturday or Sunday actually working on an opinion.

III. State of the Courts

So let's talk now about how our state courts are working.

In brief, our court system is functioning – often well, although sometimes only adequately – but the system is stressed, and it is fraying around the edges.

We no longer have access to full-time courts in this state.

We have cut 15 percent of our staff over the last five years, and also our hours and services – both in the trial courts – where citizens are affected every day – but also in programs, in research and analysis, and in education and training – the work we need to do to keep current and be innovative.

We therefore need to begin to restore some basic court services to Oregonians.

The Supreme Court building, which as you know is just a couple blocks from here, serves as an appropriate metaphor for the state of our courts. Built in 1914, it is a great building and represents nearly a century of tradition. It has been updated from time to time, but is not a modern facility. It is sturdy, but has leaky windows, uses steam heat, and we don't really know what would happen to it in an earthquake. If you have driven by it recently, you can see the black netting over some of the cornice work. That isn't an art installation by Christo – it is there to keep pieces of the cornice from falling off and hitting people. And I am asking the legislature for money so that we can make some critical repairs before the building's centennial just next year.

And so it is with our courts. They are sturdy, but are showing leaks and need some critical repairs.

Your Oregon courts are doing the same good work that they have done well for over 150 years -- adjudicating cases and providing quality justice services to Oregonians. Nearly 600,000 cases are filed each year. These range from traffic tickets to aggravated murder, from pre-agreed divorces to contested child custody cases, from determining injuries from minor fender-benders to serious medical malpractice cases to litigating complex securities and trade secrets cases.

But there are leaks. In addition to the staff cuts that I mentioned, we have put our remaining staff on furloughs for two-to-three weeks per biennium, which is a hardship for them, but also means that we no longer have a full-time court system in Oregon.

Because of the furloughs, we have had nine full-day closures in this budget period. At one time we were able to keep courts open and manage our furlough days, but with additional staff reductions we simply don't have that ability. So the courthouse doors have been closed on Oregonians. This isn't like the Department of Motor Vehicles, where you can renew your license on Thursday or on Monday. If you need a restraining order, you often can't wait another day -- you need it now.

In addition to the full-day furlough closures, courts across the state no longer are able to have public counters open at all times during regular business hours to accept requests for restraining orders, take payments, receive filings, and answer questions. During peak times, callers to Multnomah County Circuit Court can wait up to 30 minutes to have their call answered.

We have a growing number of people coming into the courts without attorneys -- mostly because they can't afford them -- and we no longer have resources to help them navigate the legal system or fill out forms properly so judges can consider their petitions. One state senator told me of a grandmother who was trying to get custody of her grandson from the child's drug-addicted father -- everybody agreed she should have custody -- but had problems filling out the necessary forms and there was nobody available to help her.

We have dozens of drug courts and other problem-solving courts throughout this state that are demonstrably more effective in solving problems and saving taxpayers money over the long term, but cost more for the Judicial Department to operate. We would have lost 10 of those courts last year -- including here in Marion County -- but received temporary funding to forestall those closures. That temporary money expires in June, and those courts likely will close at the end of this budget period unless the legislature steps in and provides funds.

These types of courts make good business sense in the long run -- because they reduce new crime and save money at the Department of Corrections and in community corrections -- but they do cost the courts more up front, because they take more time . . . more judge time, more staff time.

It is precisely for this reason that the legislature needs to look seriously at the policy options presented by the Public Safety Commission, chaired by Justice De Muniz. Those options are intended to improve public safety at lower cost and provide money to re-invest in the justice

system. In fact, Governor Kitzhaber has earmarked almost \$9 million in his budget for drug courts if the legislature approves some of the options that would make that money available.

So we have a choice: We can conduct dozens of sentencing proceedings in a day – and do that very quickly -- accepting pleas and sending people off to prison or to probation; or we can take the extra time with judges and staff and use all the tools of our justice system to reduce both crime and future costs in the criminal justice system.

And finally, our business functions are no longer what you should expect from any state agency, much less an entire branch of government. We have one research analyst to produce and examine data and statistics about those 600,000 cases. We have one internal auditor for a \$423 million enterprise that collects large sums of money and has operations in all 36 counties. And we no longer have staff dedicated to developing or monitoring performance measures.

IV. Attributes of a Healthy State Court System

So now let's compare that current situation to some attributes of a healthy state court system, and talk about what a healthy court system looks like.

A healthy court system has stable and adequate funding.

It must be stable because justice is not a spigot you can turn on and off. Adequate does not mean minimal, which is what we have now. As I mentioned earlier, we have lost 15 percent of our staff over the last five years, and our court operations funding has remained flat, despite increasing costs.

A healthy court system is open full time.

Courts must be open when you need them – whether it's a restraining order or a trial or a place to pay a fine-- not closed for lunch or for furloughs.

Healthy courts are collaborative – an area where we have made a lot of progress.

One example of courts collaborating is the Gateway Center for Domestic Violence Services in Portland – a facility just off I-205, developed by the City of Portland and Multnomah County. Victims of domestic violence who need restraining orders can go there instead of traveling downtown to the courthouse. The center has automated forms that are easy to fill out, with trained counselors – called “navigators” – to help you fill them out, and conducts video hearings so people can remain in that safe environment and not have to travel from office to office to courthouse.

Healthy courts are current and up-to-date – in our laws, our technology, and our practices.

In technology, we are using our new Oregon eCourt system in four trial courts as well as for all appellate proceedings, and we have a statewide system that allows online payments of court fees and fines.

And as our laws catch up to the realities of ever-changing technology, our court practices and procedures also must recognize the fact that jurors can Google search and tweet, and we must recognize the opportunities and challenges that social media bring. We have taken some steps in that direction. Appellate courts have published opinions online for 20 years, and now we have RSS feeds to notify people when appellate opinions are issued or other news occurs and offer live streaming of our Supreme Court oral arguments.

But to keep our courts current, we also must invest in training . . . to keep our judges and staff current on the law, on science – the psychology of eyewitness testimony, for example; on mental health issues of the people who come before the courts – veterans in particular; and on the latest methods of effective court management methods.

Healthy courts are innovative.

Oregon has expanded the proven drug court concept into comprehensive family courts, mental health courts, and now veterans' courts. All these are based on evaluated models that produce better outcomes for the people in those courts, the taxpayers that pay for the courts, and the services being provided.

And we are looking at how we can change our law libraries – which once were quiet havens for lawyers to study dusty legal tomes, and which are now quiet havens where few lawyers venture – into interactive, online legal resources centers not just for lawyers, but for people who don't have lawyers and who represent themselves in court.

Healthy courts need to be able to attract the best and the brightest.

It isn't popular to talk about pay increases, but Oregon's judges remain among the lowest paid in the country. And now many senior public-sector attorneys who appear before our judges are significantly better paid than the judges – not to mention the experienced private attorneys who historically have been better compensated. In larger counties, it is not unusual for the judge to be the lowest-paid lawyer in the courtroom.

Oregonians need a mix of experience – public and private sector, civil and criminal and family law – and a mix of backgrounds to have a healthy judiciary. The call of public service cannot by itself bring that type of diversity to the bench.

And healthy courts are timely.

Everyone knows the old saw about justice delayed being justice denied. The costs of delay can often be subtle, but often they are insidious.

Things have gotten to the point that the Department of Corrections is introducing legislation this year because court staff cannot get orders to that department quickly enough to let the department thoughtfully plan for release of youth offenders within the current statutory time limit.

This keeps people in youth correctional facilities longer than need to be, which again, increases costs to taxpayers.

V. Where To Now?

So what do we need to restore the health of our state courts?

We need to keep focusing on our core mission – adjudicating disputes. That includes meeting Oregon’s obligation that the state provide a court system able to resolve all cases “completely and without delay.”

And we need to continue to ensure that we are excellent stewards of public funds.

We have done substantial work on efficiencies and cost-cutting, and, to institutionalize that effort, I have made the Court Re-Engineering and Efficiencies Work Group (which we call the CREW) a permanent committee and part of the Judicial Department’s governance structure.

That action means we will continue to put our collective oars in the water and row together to improve our courts – to save money, work more efficiently, and improve services to citizens without additional cost. We have taken a multitude of actions – some large, some small – that benefit not only the courts, but litigants, attorneys, and the state agencies and local governments that interact every day with the justice system.

Finally, we need to start rebuilding the Oregon court system and move it towards the healthy court system I have described. We need to be clear with the legislature about what our needs are and what state funding can buy. And I think we have done that in the Recommended Budget that I have presented to the legislature.

Without getting into a lot of detail, here are my priorities:

First we need to maintain our current services and eliminate furlough closure days. Courts need to be open every business day.

Second, we need to obtain funding for the things that the legislature already has approved but that are not in our base budget.

This includes continuing Oregon eCourt into 11 more trial courts in the next two years – including Multnomah and Marion -- and providing funding for the new panel of judges and staff for the Court of Appeals that the legislature approved last session.

Third, we need to restore court operations funding so we can be open every business day. We need to be able to enter all judgments so they can be enforced, to be able to recall all arrest warrants within 24 hours to avoid false arrests, and to ensure that every court is open to the public at least seven hours a day.

Fourth, we should make some progress on judicial compensation, and

Fifth, we need to fund continued training on the Oregon eCourt system to ensure we make best use of its capabilities, and also need to address court facilities and security needs.

I am very hopeful that this session can make some progress on all these fronts, and there are some bright spots on the horizon.

The Oregon State Bar has made restoring funding for the courts a top priority – the bar is working with lawyers, the business community, and others to create the Oregon Court Funding Coalition. We need their help, and we look forward to working with them.

For the first time, we will have a “courts caucus” of legislators who are willing to be our ambassadors and advocates in the legislature. This bipartisan, bicameral approach builds on the relationships that Chief Justice De Muniz worked so hard to develop. We can show members who care about human services that courts are part of that system – in child welfare cases, child custody, child support, and caring for elders. For legislators who care about public safety, we bring accountability to the criminal justice system. And for members who care about our economy, we can show them that courts enforce the rules of the marketplace for businesses and consumers alike, and provide the certainty that businesses need to make decisions.

And we will continue to find voices in the people and institutions who need timely, fair decisions from the courts to operate their business, heal their families, and help solve their problems. We have been gratified by the support of the business community, law enforcement, victims groups, and others.

Every person or institution needs the courts at some point in their lives. And when that point comes, they need to get their day in court – in a timely manner, with able judges and staff, and in a safe court facility. This is what Oregonians expect and deserve.

VI. Summary/Closing

Let me close with this thought – as you have seen, I am more than willing to talk at length and in detail about the law, and courts, and budgets. But we can’t forget that all this is in the service of a larger goal – a goal that is described in shorthand on the front of the United States Supreme Court building in Washington D.C. – “equal justice under the law.”

That phrase embodies what we do. Our job -- amidst the sometimes difficult parties and lawyers, the triple-set jury trials, and the sometimes petty, sometimes tragic disputes that we are called to resolve – is to provide equal justice under the law to all those who come before us.

I don’t want to be overly sentimental, but the fact is that delivering justice is a noble goal – a goal enshrined in our federal and state constitutions – and all of us need to commit to that goal. We need to resolve as a state to give our institutions the tools they need to work toward equal justice under the law.

Thank you.