

GETTING TO KNOW US: JUDICIAL OUTREACH IN OREGON

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I. THE CASE FOR OUTREACH

With a combined twenty-seven years of experience in state appellate courts, we have come to realize there is a bit of truth to the idea that appellate judges live in ivory towers. Our isolation is a result, at least in part, of the quantity and nature of our work. With between 3,000 and 4,000 new cases each year, our workload is unrelentingly overwhelming—we are always behind. To encourage the frank and open exchange of ideas, our deliberative process is confidential and shared only among our judges and staff. Except for oral arguments, our jobs present few opportunities for contact with lawyers or members of the public. As a result of this isolation, even though our decisions have dramatic effects on citizens of our state, few members of the public, except for a small group of lawyers, know who we are or understand what we do.

Despite the limited time available to the members of our court, it is critical that our judges take the time to interact with citizens of our state in order to help them to understand who we are and what we do. Such interaction also gives us, as judges and court staff, the opportunity to gain a better understanding of other parts of the judicial system and legal community, and of the larger community that we live in and serve.

Our court, like many courts today, is subject to increasing criticism from various sources. On the one hand, the media

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typically does not give our opinions much attention, except when the decision is controversial or the case involves some sort of celebrity. The day-to-day work of the court and the vast majority of our decisions—many of which have tremendous effects on the citizens of our state—are given little notice. On the other hand, courts in general and our court in particular are the objects of increasing criticism. We are criticized because decisions are not made fast enough, because we did not reach the “right” or the “fair” decision, and because some believe that our decisions are driven by political or personal motives.

Some of this criticism is unavoidable: When you are deciding cases, someone loses, so there will always be someone unhappy with any decision that our court or any court makes. When you are a member of an appellate court, you will sometimes reverse the decisions of trial court judges. There certainly is no way to avoid some dissatisfaction with our court and the judicial system as a whole.

Nonetheless, we should not ignore the apparently growing dissatisfaction with the courts. We must do something to address this problem. There is no question that the erosion of respect for and support of our legal system is seriously undermining, and will continue to undermine, the effectiveness of the courts in this country. We cannot simply hope that the situation will change on its own; we need to persuade our legal and broader communities that the appellate courts play a significant role in our democracy, and that respect and support for the court system is vital to its continued effectiveness.

Some of the criticism the courts receive is unfounded and based on misconceptions about how appellate courts function and the role of law and courts in our society. In our view, education about who we are and what we do is among the most effective tools for overcoming this sort of criticism. Over the last several years, it has been a priority of the Oregon Court of Appeals to provide that education firsthand, both by inviting “outsiders” into our court and also by taking some proceedings of our court outside its usual venue.

II. TRADING BENCHES

In assessing how we might develop some sort of outreach program to address this problem, the members of our court decided that we should consider non-traditional means of getting our message out. One of the first places that we found to begin enhancing the understanding of the role of our appellate court was in our own backyard. From casual conversations with trial judges throughout the state, it became clear that some of our own state trial judges had complaints about our court and sometimes misunderstood its function. One trial judge half-jokingly suggested that appellate and trial judges ought to occasionally change places. That almost-joke turned out to be an excellent suggestion and, about five years ago, we began a program for the trial and appellate bench to do just that.

The first judge whom we invited to sit with our court was the trial judge who had made the suggestion. He readily accepted our invitation. His participation proved to be a great success from both our perspectives. Since that time, about four to six times each year, we have invited trial judges from throughout the state to sit with our court. Some of the judges have sat with us a number of times and others have sat for one day. Typically, our visiting judges hear a docket of ten to fifteen cases, and a visiting judge typically will be assigned one or more cases for preparation of a written decision.

We have also kept our end of the deal. Although logistics have prevented us from doing direct exchanges with the trial judges who come to sit with us, a number of the ten judges on our court (only two of whom are former trial judges) have sat throughout the state as trial judges. Our appellate judges have had the chance to preside over civil and criminal trials and to hear the full range of motions and other procedural matters that a trial court must deal with on a daily basis—a completely new experience for most of them.

The benefits of our program, to both trial and appellate judges, have been significant, often in unexpected ways. Although Oregon has a fairly small legal community and our appellate courts traditionally have had a reasonably good relationship with the 169 trial judges of the state, nevertheless, we often hear the same criticism from the trial bench that all

appellate courts frequently do—that we don’t write decisions on enough cases (we have the option of affirming cases without opinion), that we are too slow in issuing opinions, that our opinions are not sufficiently clear, and that we don’t have a sufficient understanding of how the “real world” works.

The time that our visiting trial judges have spent with us has given them a new, enhanced understanding of the appellate process. Many of the trial judges who have participated in appellate decisionmaking have expressed a new understanding of how difficult it can be at times to issue the sort of quick, clear opinions that reach results likely to work best in the real world. Our visiting judges have indicated that they have gained a new understanding of many aspects of our work: the necessity that issues be preserved in the trial court before we address them, the importance of the proper development of the record, the need to issue decisions affirming the trial court without an opinion in order to manage our workload, and the challenges that we sometimes face in trying to reach the result that makes the most practical sense, given the way in which the parties have presented the issues, and the restraints in the statutes and case law.

The trial judges have also expressed a new appreciation of the very real differences between their decisionmaking as trial judges and the decisionmaking process of an appellate court. Some of the judges who have sat with us said that one of the things they learned was that they loved their jobs as trial judges, and that the experience made them realize that they would not want to be appellate judges on a permanent basis. As one long-time trial judge commented:

Although trial judges do discuss issues with other judges, it is not the same. The appellate panel attempts to reach agreement on what the issues are and how they should be decided. It is a shared decision whereas the trial judge makes a decision by her or himself. That process is different and takes some rethinking to take part in it. Along this line, when I started reading briefs, I stopped and reminded myself that I was looking at cases and issues through a different set of eyes and that my approach had to be different. During conference, I had to remind myself a couple of times that I was not to look at how I would have

decided the case, but whether issues were properly raised or discretion appropriately exercised. The experience was similar, although not to the same degree, as becoming a trial judge in the first place. Someone gave me a robe and said go on the bench. The change from being a lawyer to a judge was a rather big one and a learning process that took quite awhile to have a comfort level. I can see that it would also take some time to get a comfort level to sit on the appellate bench.

Another experienced trial judge said:

The conferences to decide whether to hold an opinion or have it go out lead to interesting discussions and can lead to a reassessment of a position or how a decision should be made. I do not get that normally at the trial level because of the time. It is nice to reflect and take the time necessary to make the best decision possible. I also learned to appreciate the necessity of analysis of issues that will help me do my job. I analyzed issues, but did not in the same way I will now. I have a better appreciation of following a specific method of analyzing issues. The Court of Appeals has an excellent method of going about its work and although not all of it can be done in the trial court, some can.

As helpful as it has been for trial judges to sit with us, perhaps it has been even more helpful for the members of our court who were not trial judges to experience life as a trial judge. Judge Deits's experience as a visiting trial judge was, for example, a real eye opener:

I have worked as an appellate judge now for nineteen years, and I am used to our fairly predictable and orderly life. I had forgotten, or to be more accurate, I never really knew, how free-flowing and sometimes chaotic proceedings in a trial court can be. In my work as a trial judge, I had to handle constant schedule changes and new developments of all kinds. New issues were continuously arising in circumstances in which I did not have the chance to look up the answer! I definitely had new insight into how much work it is and the different skills it takes for a trial judge to manage a case and the courtroom.

All of the appellate judges from our court who have sat as trial judges have come back with new respect and insights. As

one of our judges stated about his experience working on the trial bench of one of our state's larger counties:

Before becoming an appellate judge, I respected trial court judges because I knew that the docket demanded speed. Once I sat on the trial bench, my respect only grew. After observing the trial court judges in action, I am truly amazed at the speed they work at and how much justice is achieved as a result. Different "things" came up that just had to be dealt with on the spot.

Another observed:

My respect for trial court judges deepened. Being on the trial bench is very hard work. It requires a broad range of skills. Not just an ability to cite and apply a relevant rule of evidence, but also an ability to work with people who are in very stressful situations, an ability to listen at several levels at once, and an ability to make a decision quickly. I remember during the first case that I tried when one of the lawyers said the words, "I object." My first instinct was to think to myself, "That's an interesting question. I should get my law clerk to do a memo on that." Of course, I didn't have that luxury. Trial judges rarely do.

One aspect of the work of a trial judge that made an impression on all of our judges is how much more emotionally challenging and difficult the decisionmaking process can be at that level. Although many of our decisions can be emotionally challenging at times, it is much different from having to deal directly with the parties affected by a decision. As one of our appellate judges stated:

It's one thing to read a transcript in a child custody case to determine whether the trial court erred in awarding custody to one parent or the other. It's another matter entirely to sit in court, listen to the parties explain how much each loves the child, and then look them in the eye and tell them your decision. I found that very difficult.

Both the trial and appellate judges who have participated in our program have expressed great anxiety in leaving what might be referred to as their comfort zones. Without exception, however, each has found the experience to be rewarding and enjoyable and believes that he or she is a better judge for the experience. The judges and staff of trial courts that we have

visited have been incredibly supportive and appreciative of our efforts.

III. A COURT OF APPEALS ON WHEELS

At about the same time that our judge-exchange program began, we also started looking for additional ways to interact with the various communities in Oregon with the objective of familiarizing them with our judges and the role of our court. All of the judges on our court spend considerable time speaking at continuing education programs and participating in various bar activities. However, we wanted to increase the exposure of our court's operations throughout our state. We hoped that such interaction would help to restore support and respect for our judicial system in general and for our state's appellate courts in particular.

Oregon is a geographically large state—96,002 square miles—but sixty percent of its population is located in five of its geographically smallest counties in the northwest corner of the state. Much of the state's population is clustered around Portland, which is by far the most populous city in the state, with about twenty percent of the state's population, and Salem, the capital. Although the jurisdiction of the Court of Appeals is statewide, all ten of our judges have their chambers in Salem. Except once a year, when the court sits in a small town in the eastern part of the state—a local legislator many years ago got a law passed that requires the court to hear certain cases there once a year—our court never left the capital. We wanted to close the gap between us and many of the places our cases come from. In addition, we wanted more people to see what we do. Typically, our courtroom is sparsely populated: the lawyers arguing the cases before us that day, a few of the parties in the cases, and members of our court staff. Although our courtroom is open to the public, few members of the public attend arguments.

In order to increase the visibility of our court and promote understanding of how the court really works, we decided that we needed to move out of our courtroom and out of the capital. We thought that an appropriate place for the court to hear cases

throughout the state might be in schools. Consequently, we began our experiment by setting arguments in a few high schools in different parts of the state.

Our statewide school program has proved to be a huge success. We have now heard cases in about forty high schools, junior high schools, and colleges in all parts of our state. As a group, the court has logged over 9,000 miles of travel, including destinations where statewide elected officials rarely appear. Not only has the program allowed citizens to see firsthand how the court operates, to ask questions, and to interact with and get to know the judges of our court, it has provided us with the chance to observe and interact with the diverse communities and individuals of our state and gain a better understanding of their perspectives.

Since the beginning of the program, our court has held oral arguments outside our Salem courtroom about six times a year. Immediately after we began the program and publicized our willingness to travel, we received numerous invitations from schools throughout the state. To date, we have visited only schools that have invited us to come to their campuses. Although we have found these visits worthwhile, we have noticed that the schools that have invited us to tend to be ones that have an excellent program on government already in place. More recently, we have made an effort to not only respond to the invitations that we receive, but to invite ourselves to schools that do not have such programs in place.

The majority of our visits have been outside of the state's largest population centers. Typically, the process begins when the Chief Judge is contacted by a trial judge from one of our state's thirty-six judicial districts or by a representative of the school where the arguments are to be held. We identify a date for the arguments—usually about six months ahead, and the planning begins.

On the court's end, one of our staff member coordinates all of the logistics of the visit. She works with the presiding judge of the local trial court and the representative of the school on the details of the visit. As soon as possible, the presiding judge of our panel that will be hearing the cases selects cases that will be set for argument. We attempt to choose cases that involve local

lawyers as often as we can. We also try to select cases that will be interesting to the students. Among many other issues, we have heard cases about searches of student lockers, arson in school settings, cattle rustling, an auto accident involving twelve teenagers in a Volvo, free-speech issues, and students suspended from school. Our court provides the briefs and case summaries to the schools well in advance of our visit so that teachers have the opportunity to present and discuss in class the issues the students will be hearing.

Students also learn about the general operation of the court before our visit. The discussion of the cases and court operation sometimes is led by a teacher, but often local lawyers or judges volunteer to talk with the students, so the program has the additional benefit of introducing students to the local court and legal community.

Schools hosting the visits and local lawyers and judges engage in substantial preparation for our visits. The schools must adapt their gym or assembly hall as a courtroom for a day. Teachers and administrators must often alter class schedules to allow students to attend oral arguments for several hours. As mentioned above, teachers or local lawyers and judges often brief the students in advance on the cases they will hear.

Also, in most communities, the local bar association arranges a social event that gives our judges the opportunity for informal interaction with the bar. Because Salem is so distant from many of these communities, this is a valuable opportunity for us to get to know one another. Local bar leaders also often arrange for our judges and staff to attend and speak at community organizations, such as service clubs. As time permits, our judges also visit classrooms at other schools and colleges in the area. The judges also meet with local newspapers and other media.

The schedule for hearing oral arguments is coordinated as much as possible with the school schedule. We usually start oral arguments around 8:30 in the morning. We always invite legislators from the area, who occasionally attend and sometimes introduce the court. We also invite members of the local bench, and the court is often introduced by the local presiding judge. It always makes the appellate argument more

interesting when the trial judge who decided the case is in the audience! More recently, we have also been inviting one of the local trial judges to sit on the panel for one or more of the cases. The arguments are well attended by students (often from other schools as well as from the host school), by teachers and administrators, and by community members. Following the arguments, our judges answer questions from the audience.

We have been amazed at the incredibly good behavior of the students. With very few exceptions, the students have quietly listened to the arguments and acted completely respectfully and appreciatively toward the court. We have also been impressed with the extent of the welcome we receive at many schools. Often we are treated to lunches prepared by school cooking classes, and once we dined while being serenaded by a school's string quartet! The care taken by the staff and students of these schools shows how honored they feel by our visits.

As time permits, our judges often visit individual classrooms after the arguments to discuss the role of appellate courts and to answer students' questions. For the judges, at least, this is the most rewarding part of the visit. We usually get a few questions that might be characterized as "interesting," such as, "How much do you make?" or "What's the worst thing you ever did?" and "Have you ever been in jail?" However, most of the questions are extremely thoughtful and insightful, and sometimes surprisingly sophisticated; the amount of preparation by students and teachers is often shown in these question-and-answer sessions.

Comments we receive by way of thank-you notes from students, teachers, and administrators are the best evidence of the impact of our visits. Students learn that real courtrooms are not what they see in the media. One eighth-grade student wrote:

My first impression as I walked in was that it would be just like TV. When the hearing began, my thoughts quickly changed, as yelling, angry and arguing people were replaced by calm and friendly ones. The hearing was almost a conversation between attorneys and judges.

They also learn that we are real people striving to do good work. Another student wrote:

I suppose that many young people view judges of all kinds with awe and mysticism. Yesterday I learned that judges are indeed human, but the awe I feel has only grown. I have an even greater admiration for judges who serve our state with such diligence.

Even school administrators have been pleasantly surprised by our approachability. One principal wrote to tell us that “[t]o be honest, I was expecting your visit to be very formal and somewhat removed from the lives of our students. The exact opposite was true.”

Perhaps most surprisingly, even the youngest students have shown a remarkable grasp of the heart of the judicial process and the importance of keeping an open mind. One student commented about a case we heard in her school by saying, “As to the other defendant, I am not quite sure. I used to think she was guilty, but after hearing the case yesterday I don’t know anymore.”

Our visits are extraordinarily well received in the larger community as well. Local newspapers often send reporters and photographers to our school visits and publish extensive stories on the events. Without exception, these stories include extremely positive comments about the court and the judges. The articles often include comments from students, teachers, and community members about what a valuable learning experience it has been. One member of the public at a visit to a small eastern Oregon town was quoted in the local paper:

Earl Tarbell of Elgin, who will be 90 next week, also was enthusiastic about the opportunity to watch the appeal of a case in which he was involved heard in Baker City. “It’s a lot better than Salem—that’s a long ways away,” he said. . . . Tarbell said he wasn’t opposed to having his case argued before a large audience of high school students. “I think it’s a good idea,” he said. “It gives them an idea of how things work.” And he was impressed with the attention the students gave the court session. “I’ve never seen kids so quiet in all my life,” he said afterward.¹

¹ Chris Collins, *Students See Court in Action: Three Appeals Heard in BHS Auditorium*, Baker City Herald 1, 3 (Sept. 25, 2002).

Through our community outreach program in the schools, we have been able to reach thousands of students and community members with a positive message about our court and the judicial system in general. The personal interaction during these visits has allowed us to convey not only that judges are hardworking individuals dedicated to our jobs, but also that we are very real human beings, capable of making mistakes, but trying our best to carry out the law. Many citizens have told us that, after meeting the members of our court and learning about our work and observing us, they view the court and the individual judges in a much more positive light, and that they view our decisions as based more on what the law required us to decide rather than on personal agendas of the judges.

As this summary shows, the costs of the program are minimal, but the rewards are many. Not only does the program slowly but surely increase public respect and support for the courts of our state, it provides each member of our court with a very enjoyable and valuable opportunity to learn and improve as judges.

IV. THE BENEFITS OF OUTREACH

Despite a heavy workload and a lack of time, members of the appellate judiciary simply cannot put their heads in the sand and ignore increasing problems of lack of respect and support for the judicial system. Working hard to issue quality, timely decisions simply is not enough. Judges must take the time to address the growing misperception of the role of the courts and of the judges who serve on our courts. Our court's experience with its outreach programs demonstrates that taking a proactive approach and educating our communities can be an important means of addressing misunderstandings about the role of the courts. In addition, we have found that these programs have had unexpected benefits for us as judges and individuals, enriching our appreciation of our state and the communities we serve.

