

THE THIRD BRANCH
SUB-COMMITTEE of NH CITIZENS COMMISSION ON STATE COURTS

Judicial
Off-Line Meeting Minutes
Wednesday, November 30, 2005

Present:	Donna Davey, Martin Gross, Andrew Peterson (Chair,) Katrina Swett, Michael Whalley, Dick Winters	
Absent:	Kelly Ayotte, Charles Bickford, Robert Duhaime, Francis Frasier, Peter Heed, Ann Kuster	
Guests:	Honorable John Broderick (Chief Justice of the Supreme Court,) Donald Goodnow Esq. (Director of the Administrative Office of the Courts,) Honorable Edwin Kelly (Administrative Judge, Family Division,) Laura Kiernan (Communications Director, Judicial Branch,) Honorable Robert Lynn (Chief Justice of the Supreme Court,) Honorable John Maher (Administrative Judge, District Court and Family Division,) Dale Trombley (Fiscal Manager, Administrative Office of the Courts,) Howard Zibel Esq. (General Counsel to the Supreme Court and the Judicial Branch,)	
Topic	Discussion	Action
Pre-meeting announcement to Third Branch Committee members:	A meeting has been set up for December 14, 2005 for members of the Committee to meet with the Governor (1:30 p.m.) the Speaker of the House (2:30 p.m.) and the Senate President (3:30 p.m.)	Third Branch Committee members who are able, will meet with the Governor, Speaker of the House, and Senate President on Wednesday, December 14, 2005.
Opening Address to the Committee:	<p>Chief Justice John Broderick opened the discussion with comments indicating that the Supreme Court as currently constituted is focused on having more frequent and meaningful discussion with the Legislative Branch.</p> <p>There was a time when the Legislative and Judicial branches relied on outside assistance to communicate, but a few years ago, work towards a goal of understanding each other's thinking began to change that dynamic. Open and formal meetings were set up with the Senate to</p>	

<p>Opening Address to the Committee (cont'd:)</p>	<p>provide opportunities for exchange of communication. This interaction led the Court and the Legislature to work together to review judicial budget needs and present a maintenance budget – this was a complete revisal of the past process of estimating the judicial budget needs.</p> <p>The court has diligently moved toward establishing an open and honest relationship with the Legislature on all subjects, both global and minute. Chief Justice Broderick spoke of a recent meeting of members of the Judicial branch with members of the Legislature, notably the Speaker of the House, the Senate President, the Democrat Leaders of both the House and the Senate and both Chairs of the Judicial Committee in the House and the Senate to get to know one another.</p> <p>A three page document regarding the Judicial Branch Budget Process, demonstrating Judicial branch contact with the Legislative branch was presented to the Committee (copy attached to these minutes) by Chief Justice Broderick as an example of interaction on the Judicial budget.</p> <p>Gains are apparent in interaction with the Legislative Branch, and there is hope for continued improvement.</p>	
<p>Budget Process:</p>	<p>Some difficulties with the budget process of the past and current challenges and enhancements were discussed.</p> <p>1. By statute, the Judicial budget must go to the Governor before submission to the Legislature. The Governor follows a process of going before the Legislature with the budget. The Judicial branch is not involved in those hearings for the underlying reason that the Governor is the head of the Executive branch and is not involved in the Judicial branch, although the statute does say that the Governor can comment on Judicial budget requests.</p> <p>In the past, the judicial could comment, but was not involved in the process as it was reviewed, tweaked and approved.</p>	

<p>Budget Process (Cont'd)</p>	<p>Currently, the Court took the initiative to have a meeting with pertinent members of the Legislative branch to work toward common understanding. The resulting combined efforts of the Judicial and Legislative branches prior to submission to the Governor ensured the Judicial was more involved in the process. The Judicial branch does have pre-contacts with the Governor prior to submission to the legislature.</p> <p>Chief Justice John Broderick noted that Governor Lynch has been acutely interested in the Judicial budget, that he made no budget cuts, and that he made that decision on an informed basis.</p> <p>2. The Legislature considered the separate court line items as solidified, with no fluidity among them.</p> <p>In the past and currently, in the event one court had greater financial need than anticipated and another court had less, there could be no movement from one to the other. The Legislative branch believed the Judicial branch always robbed from the District Court and erected a bullet-proof glass around the budget – don't you dare go there!</p> <p>Currently, everyone is willing to say “why don't we take a look at this?” We've worked to establish trust and are trying internally to get on the same page, to be an integrated system here, so go as a unified front. In working with the Legislature to revise the Judiciary budget process, the Judiciary agreed to state that “no new services positions are requested.”</p> <p>Opportunity for Improvement: There may be some benefit to public exposure. The Judicial branch would like to be seen by the Legislature as the Judicial branch, not as separate courts. Unlike members of the Legislative branch, members of the Judicial branch are not before the public for re-election, so there is a recognized need to educate the public about what the court does, to raise public trust in their Judicial representatives. The court system is a political institution. The role of the judicial system and the importance of an independent judiciary are</p>	
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Budget Process (Cont'd)	<p>important for the public to understand. Some venues to talk about the role of “how government works,” perhaps with live web casts may be considered.</p> <p>3. The budget is set for 2 years. In the past and currently: When unanticipated and unknown expenses come in, that makes it difficult. When a Governor comes in January, he may be living with someone else’s budget until July. Opportunity for Improvement: The Judicial branch would recommend annual budgets.</p> <p>4. The Federal Government sometimes requires things they don’t always fund. (Chief Justice Broderick) We had it rough from time to time with the Legislators. (Marty Gross) Currently: More problems come through the court system that used to be resolved elsewhere, i.e. town halls, churches. Once here in our jurisdiction, we have to resolve them. (Chief Justice Broderick)</p> <p>5. The Supreme Court moved from being among the other Judicial courts to a separate place on the Heights.</p> <p>6. Many Representatives were also Selectmen. This is one of numerous incidents that caused a divide. (Chief Justice Broderick)</p>	
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<p>Questions:</p>	<p>Q: Is the budget presented in the same way as other agencies? (Dick Winters) A: It's hard to know how other agencies present their budget. It's expected that any budget is estimated in the same way. The change that has taken place here is in the dialogue that's going on.</p> <p>The Judicial branch identified 10 priorities with a dollar sign. A skeletal budget was given the Legislative branch of what the Judicial branch is utilizing now. Some things dropped. Some changes are initiated. Then we go back to the Legislature and say, "remember when we mentioned #X – now that's on the other side and needs to be funded." (Chief Justice Broderick)</p> <p>Q: Is the budget presented on the same form as others? (Marty Gross) A: One exception is in regards to personnel – the Judicial branch has a different format that lists the person/title/where expected to be working/\$ amount. A detailed submission is always prepared. The reason the personnel schedule is different is that there are different pay grades and levels that differ since the unification of 1984. (Dale Trombley)</p> <p>(The unification of 1984 refers to the unification of the court system in which court personnel were previously county employees, courts were local, and Judges were paid by the Executive branch.) (Howard Zibel)</p> <p>Q: Is there any concern with that? (Marty Gross) A: 65% or so of all Judicial branch employees (non-judges) have reached step 6. In the Executive branch, after Step 5, a person waits 2 years for a 2% pay raise. In the Judicial branch, after Step 5, a person waits 5 years for a 5% raise. (Chief Justice Broderick)</p>	
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Questions (Cont'd:)

Opportunity for Improvement: Chief Justice Broderick would like to change this, perhaps with longevity pay raises after each top step, so that people in a labor grade aren't stuck. Many of the Judicial branch staff openly state they would not remain in their positions if it weren't for benefits.

Q: To what extent do you hear from the public? (Katrina Swett)

A: In the Communications office, the public is heard from in terms of crisis – a change in court hours, etc. A number of explanatory documents were created relating to the processes and that has enhanced the quality of the reporting. (Laura Kiernan)

Chief Justice Broderick explained that on a net basis, the Supreme Court has about 1 ½% of the entire Judiciary budget. “The complaints we get are related to service, which in a sense goes back to the budget, but the public doesn't see our budget and doesn't hate us for our budget.” He stated that occasionally, an intranet mailing would go out saying “this is what we are doing on the budget,” giving periodic updates. He thinks strides have been made.

An effort was made to make known that there is interaction, discussion – that reasonable people are sitting down saying “this is what there is, this is what we need.” (Laura Kiernan)

Q; Do you have greater flexibility in line items than the Executive Agency (they're constrained.) (Andy Peterson)

A: The same limitations that apply to the Executive Branch apply to the Judicial Branch. There are 2 differences, travel expenses and PAU's (Program Appropriation Units) that apply to the Supreme Court and the Superior Court. Previously, Supreme court expenses would have to be applied to Superior Court expenses. We've lost flexibility in that now we cannot transfer when we have a tight budget in place and room in another. (Dale Trombley)

Questions (Cont'd:)

Q. What budgetary challenges do you see, anticipate because of the roll out of the family court, causing a reduction of Superior Court Judges, etc.? (Andy Peterson)

A. We have to be enormously careful in presenting a budget to the Legislature that would move money from areas needed now to the Family Court system. We're doing well with that. We've been able to put the Family Court development online (putting people with alternative dispute resolution.) At this point in time, we're not prepared to say it's a struggle because of budgetary concern or because it's a change and change is difficult to implement. We're absolutely dedicated to going back to the Legislature and saying "we promised we'd do this (redirect to Family Court) and we have." Efficiencies are gained by having a dedicated core of Judges to Family Court vs. changing types of law and statutes.

We are going from 11 to 29 sites throughout the State to have marital cases heard at the Court level. Many of these sites were not designed for larger case loads so it will take time to ramp up. (Chief Justice Broderick)

Q. What about public disclosure on contacts between the Court System and the Legislative and Executive branches? There is a potential for an increasing level of cynicism that somehow people are meeting behind closed doors. There's a risk that comes along with increased contact. There needs to be transparency, to keep as open as you can. These contacts do happen and happen routinely. (Marty Gross)

A. If we design a view based on the most cynical person, the system is going to crumble.

Comment: It's not a matter of cynicism. People come before you for resolution. (Marty Gross)

Comment: It's an issue of educating the public with what the court does. There's a need to raise the educational level out there and build trust.

<p>Questions (Cont'd)</p>	<p>(Katrina Swett) Chief Justice Broderick spoke about civic education and finding some venues to talk about the role of “how government works.” He stated they have live webcasts now.</p> <p>Q. Does the court have certain standards about what types of legislation to comment on with the Legislature? (Andy Peterson) A. Some types of legislation the court may need to comment on, such as when a certain legislation will increase court attendance and the need for more Judges. The legislation may be good legislation and it may be a good thing to do, but the Legislature needs to take into account what effect passage will have upon resources. Other types of legislation may be inappropriate to comment on. The general rule is, if it is a policy matter, we don’t take a position. If the issue affects the way we accomplish our jobs, then we need to give our input – not to urge legislation one way or the other, but merely to advise what the effect may be upon the courts day-to-day internal operations.</p> <p>My job is to move the system forward. That necessitates being involved in the political process. There is a code of ethics that all members of the Judicial branch adhere to. We will not opine on something unconstitutional. The public expectation is that there will be dialogue among leaders of the Executive, Legislative and Judicial branches of government. We could do a better job increasing public awareness that these contacts occur. (Chief Justice Broderick)</p> <p>Q: Ever feel that too much time is spent in the Legislative arena? (Andy Peterson) A: Most of the time, Judicial input is given at the request of a particular Committee considering legislative change. Many times the Legislature asks for comment on a particular bill. This is not unduly burdensome and is part of the position. There would be concern if the Legislature questioned, “why are these guys here so often?”</p>	
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<p>Questions (Cont'd)</p>	<p>Exercise: Put on the web search “separation of powers” and see what comes up and how many number of rulings there are.</p> <p>Chief Justice Broderick stated “We have three branches that are co-equal. In an inter-jurisdictional dispute, there are three dogs in the race and one has an umpire’s suit on. We’re one branch of government and another has the purse strings. It’s deliberately set up that way. The Supreme Court is not in the habit of filing litigation, or becoming involved in disputes. The number of times separation of power issues have come here, they are very fast, very law and very history intensive. The Judge on these cases has no option but to sit. That’s how the system is established. It’s a wise system. I don’t have a dog in the race. I’m just holding the chair and doing the best I can. In a totally personal sense, I don’t have a point of view. We intentionally and appropriately stay as far away as we can. These collisions are far and few between. There is a LOT of shared responsibility in the system. It seems appropriate from where I’m sitting because I know the people involved and their intentions and I know my own intentions.” (Chief Justice Broderick)</p> <p>Q: To what level has divergence of opinion been allowed? Thinking people have varying views that have merit. (Andy Peterson) A: You can’t run a system where no one can have differing opinions. Free speech is alive and well. (Chief Justice Broderick)</p> <p>Q: Would there be any efficacy in rewriting the code? (Andy Peterson) A: It’s currently being revised by the ABA. By next August it should be sent to delegates for approval. (Chief Justice Broderick)</p> <p>Q: What policy is there that in a way has some teeth to it that is useful for public education? (Andy Peterson) A: Chief Justice Broderick stated that he met with the Governor the day</p>	
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Questions (Cont'd)	before and the financial disclosure form is being revised. That might be helpful.	
Next NH Citizens on the State Courts Commission Meeting:	The next formal meeting of THE THIRD BRANCH sub-committee of the NH Citizens on the State Courts Commission will be held in conjunction with and during the next NH Citizens on the State Courts Commission meeting on January 17, 2005.	The Third Branch sub-committee will meet formally at the next NH Citizens on the State Courts Commission Meeting on January 17, 2005