

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

**Executive/Legislative**  
**Minutes of Off-Line Meetings**  
**Wednesday, December 14, 2005**

Present:	Donna Davey, Peter Heed, Martin Gross, Ann Kuster, Andrew Peterson (Chair,) Katrina Swett	
Absent:	Kelly Ayotte, Charles Bickford, Robert Duhaime, Francis Frasier, Michael Whalley, Dick Winters	
Guests:	Senate President Theodore Gatsas, Kate Hannah (Legal Assistant to the Governor,) Susan Kelly, Governor John Lynch, Speaker of the House W. Douglas Scamman Jr.	
<b>Topic</b>	<b>Discussion</b>	<b>Action</b>
Meeting with Senate President Theodore Gatsas:	Katrina Swett took notes relating to the meeting with Senator Gatsas.	Attached to these minutes.
Meeting with Governor John Lynch:	<p>Three areas of focus were to be considered:</p> <ol style="list-style-type: none"> <li>1. Budget</li> <li>2. Common Legislation (matters of interest)</li> <li>3. Separation of Powers (evidence of decisions relating to balance in that area)</li> </ol> <p><b>BUDGET</b>  <b>Q: Government can comment, but not have a substantive input in the submission of the Judicial budget request. Is there a sense of having benefited or lost something related to the budget process? (Marty Gross)</b>  <b>A:</b> It is true that, by statute, the Governor is permitted to comment on the Judicial budget but not change it. However, I was very involved in the budget process this year, changing the budgetary approach to a zero base with no additional personnel to base it on what the real needs are. The Judicial branch advocated for their budget. There needs to be a free and open dialogue on details in order to be an advantage. (Governor)</p>	

Meeting with Governor John Lynch Cont'd:

**Opportunity for Improvement:** The Judicial branch does a good job with capitol needs versus operating expenses. Although needs were addressed, I didn't feel that we got into priorities with the Judicial budget. There is a need to do a better job of educating people. There has been more conversation but there needs to be even more. We ought to do more with them, not only with the Executive – Judicial, but also the Judicial – Legislative and the Legislative – Judicial. The tendency is for the Judicial branch to come forth at budget time and then go back into seclusion, much like UNH was doing. There is a need to follow the process that UNH has done. (Governor)

**Q: Do you see any risk in problems of perception in informal contact? (Marty Gross)**

A: I've never had a conversation uncomfortable to have with the public. As long as they are open, that's fine. Openness takes some of the risk away. If there were unopen contact, then I would be concerned. Conversations with Chief Justice Broderick have been best for the Judicial branch and best for the State. (Governor)

**Q: How should communication take place – what is the best modality?**

A: Probably all of the above. We were very engaged in the budget process we just went through. I need to know what's driving the cost, what the needs are. That's the benefit of zero balance. Sometimes, historically the way things have been done just continues. It's appropriate to ask the question of what is the best way? Is this the best way or are there improvements, not just with the Judicial branch but with every area. We should be able to have discussions in public of needs and priorities. (Governor)

**Opportunity for Improvement:** Consider what is driving the cost. Consider if the way things are being done is the best way or could improvements be made. Have discussions in public of needs and priorities. (Governor)

Meeting with Governor John  
Lynch Cont'd:

**Q: Have there been any experiences where you felt information was not forthcoming? (Ann Kuster)**

A: No, because again, the practice was very different. (Governor)

**Comment:** Capitol needs come through the Legislature; perhaps they're used to just that. The Chief Justice felt this last session came out better because the way the budget was done was changed and the atmosphere of trust that has been established over the past 2 years helped with the process. But you don't get the opportunity to suggest how they might make their objectives better presented – i.e. separate personnel system and inability to tell them how you think the court can improve. (Marty Gross)

**Governor Lynch:** Every single department where we zero-based, said their budget was a maintenance budget. I heard this over and over again. Some said we “really don't have to understand our budget because” of the public policy of our state. But we need to understand how the money is being spent to ensure the organization continues to be relevant. We did the budgets together, sat at a table and went over them. Often we discussed needs and priorities which the Commissioner and Deputy Commissioner didn't even know were there. They got a better understanding of their real needs as part of this process.

**Question: Do you think the Judicial branch should become involved in hearings? (Marty Gross)**

A: That could be helpful. I don't believe it would jeopardize their independence in any way. (Governor)

**Opportunity for Improvement:** Consider Judicial involvement in budget hearings.

**Question: One of the goals of the Chief Justice is to help the public understand the role of the Judiciary branch. Would it be helpful for representatives of the Judicial branch to speak here and there around the State? (Katrina Swett)**

<p>Meeting with Governor John Lynch Cont'd:</p>	<p>A: I think that's a great idea. People want to have information. (Governor)</p> <p><b>Opportunity for Improvement:</b> Hold a forum to have members of the Executive, Legislative and Judicial branches to discuss the roles of each branch before the people. An open house at the State House for citizens to come and listen might be helpful. The media could be invited, as well.</p> <p><b>Comment:</b> It's a credit to our State that 61% of survey respondents have no experience with the court system. 4<sup>th</sup> graders do come through the State House and get a better sense of how things work. To get a better sense of the Judiciary branch is important for students. It would be helpful to have students spend an hour in District Court to see what it's like. Perhaps this could be considered a requirement before graduating high school. Having a revolving group of students in the back of the courtroom would also give accountability. (Andy Peterson)</p> <p><b>Governor Lynch:</b> That approach was used in relation to the Shipyard. Commissioner's needed to go there and meet the people.</p> <p><b>COMMON LEGISLATION:</b></p> <p><b>Question: Going beyond the budget, has the Governor's office engaged in any issues related to the effectiveness of advocacy? How do you assess there they are now? (Andy Peterson)</b></p> <p>A: I haven't gotten into legislation affecting the courts. (Kate Hannah) The issue of the Governor's ethics legislation has been discussed, talking about that and how it may and may not be helpful in terms of financial disclosure and equality of the branches. People from AOC came over on behalf of Agency. Judges do testify sometimes on certain legislation. The General Counsel to the Supreme Court and the Executive Branch comes over and testifies on occasion. Nina Gardner has a high profile presence on specific subjects.</p> <p><b>Opportunity for Improvement:</b> Explore the possibility that the Judicial branch could increase their effectiveness in the State House by</p>	
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<p>Meeting with Governor John Lynch Cont'd:</p>	<p>utilizing Nina Gardner more. (Marty Gross)</p> <p><b>Question: One thing we are exploring is whether there times when it is not appropriate? (Andy Peterson)</b>                  A: Discussion revolved around a specific instance when a Judge gave a personal opinion (legislation arose out of conflict among various courts on a specific issue.) Lack of communication can be a problem. On the other hand it can be difficult with legislation to have 6 different Representatives saying 6 different things. (Governor)</p> <p><b>Question: Do you feel that information flows through one way and not the other? If making a decision on an issue of constitutionality where a Legislator has specifics on a case, Senator Gatsas feels there is constraint about getting matters before the Court. Do you have an opportunity on the record to weigh in? (Andy Peterson)</b>                  A: There is an opportunity on the record to file a brief, but there is a one way street. (Kate Hannah)</p> <p><b>Opportunity for Improvement:</b> The Judicial branch could invite members of the Legislative branch and Executive branch to discuss opportunities to communicate. (Kate Hannah)</p>	
<p>Speaker of the House, W. Douglas Scamman Jr.:</p>	<p>Three areas were to be considered:</p> <ol style="list-style-type: none"> <li>1. Budget</li> <li>2. Separation of Powers</li> <li>3. Whether the Legislature feels the same way as the Judicial</li> </ol> <p><b>Question: How is the relationship among the branches these days? (Andy Peterson)</b>                  A: If I have a strength, it's being able to sit and talk with anyone. Way</p>	

<p>Speaker of the House, W. Douglas Scamman Jr. Cont'd:</p>	<p>back the Governor's had involvement in the budget, then that changed and that was a mistake. The way it was done this time was really good. There is a statute that the Governor can only comment. We want an individual court but don't want to see them in a position of not being able to have their budget reviewed. It becomes adversarial. The court isn't in the budget business. To be open to the expertise of financial assistance would be helpful. In the past they haven't been encouraged to do it. This time, Justices came over and spoke with Tom Eaton and the Speaker of the House, and talked about it with House Finance. That's why the budget did better this time, because it was a team effort. (Speaker of the House)</p> <p><b>Question: The Chief Justice talked about building an atmosphere of trust. By doing it this way, they were able to understand the Judicial branch numbers a little more. What do you think of the value and the risks of informal contact? (Marty Gross)</b></p> <p>A: I see only value, no risks. The more you talk to each other formally and informally is fine. You can't make a decision unless communication is going on. One of the risks of private contact is if the person doesn't tell you up front and you find out later, it damages credibility. It wasn't always acceptable for Judges to give Legislators the facts. (Speaker of the House)</p> <p><b>Comment:</b> The consensus is that the process of developing the budget with the court was like night and day from before, and that it went well. (Andy Peterson)</p> <p><b>Opportunity for Improvement:</b> I think Judges should have an opportunity to present their budget in hearings like everyone else. And I'd like to see more contact between the Judicial and Legislative branches. (Speaker of the House)</p> <p><b>Comment:</b> One of the biggest changes in the next few years is rolling out the Family Court statewide (domestic violence and juvenile cases</p>	
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<p>Speaker of the House, W. Douglas Scamman Jr. Cont'd:</p>	<p>are moving into Family Court.) (Andy Peterson) Response: It's important that the State Court and Family Court look at dynamics of what is needed in Superior Court and Family Court. (Speaker of the House)</p> <p><b>Comment:</b> The report from the Court is seeing efficiencies from having the same Judge working with members of the same family. (Andy Peterson) <b>Response:</b> It's encouraging that all see it as being able to do the change without additional funds. (Speaker of the House)</p> <p><b>Question: What about interactions with Judicial Representative's on other than the budget? (Ann Kuster)</b> A: This term in my service here, there has been no problem, they've been very open. (Speaker of the House)</p> <p><b>Question: What about a specific? How about the Dan Hughes case on school funding? Because of interaction he saw between Judges and members of Legislature he did not feel he had an opportunity to have a fair judgment. (Marty Gross)</b> A: He thought he'd have a fairer shot on the Court than on the floor of the House. The Court was not in a position to do much more than they did because of Legislation passed. He had the guts to go forward and add an issue that needed addressing and earned the 1<sup>st</sup> Amendment award from Loeb. (Speaker of the House)</p> <p><b>Question: Do you feel you have access to specifics? (Ann Kuster)</b> A: Our Constitution gives us that right on pending legislation. Where one would get involved in an amicus brief, if there was a law where it seemed appropriate to put in an amicus brief, I have no problem with that. (Speaker of the House)</p> <p><b>Comment:</b> The Senate President didn't feel he had a mode to present</p>	
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<p>Speaker of the House, W. Douglas Scamman Jr. Cont'd:</p>	<p>information to a Judge that might make a decision in a court. (Andy Peterson) <b>Response:</b> If we passed a law and felt the law was clearly correct or clearly wrong, I don't see any reason why he can't give input. (Speaker of the House) <b>Question: Is it useful to tell the court "Legislators are entitled to file an amicus brief?" (Marty Gross)</b> A: Anyone can file an amicus brief. (Speaker of the House)  <b>Comment: A Legislator has said to us, "I feel constrained." (Andy Peterson)</b> <b>Response:</b> This constraint doesn't exist. There is a process. The Court is very liberal in accepting these. (Speaker of the House)  <b>Comment:</b> There are cases we've had before the Supreme Court that have a different perspective. The Governor filed a brief as well. In education cases, that's not uncommon. (Susan Kelly) <b>Response:</b> Senator Gatsas was not President of the Senate at that time; he may have felt personally constrained. (Speaker of the House)  <b>Question: What do you feel about the idea of courts inviting Legislators and Leaders to meet? (Ann Kuster)</b> <b>Comment:</b> 61% of survey respondents haven't had any contact with the courts. As a result, there is a lack of understanding among the populace about the role of the Judicial branch. Would it be helpful to invite Legislator's to be present in court sessions? (Ann Kuster) A: I don't know how much that would do. 39% of the people do deal with the courts. People may wonder why one person is put in jail for 1 year and another for 6 months for the same thing. (Speaker of the House)  <b>Comment:</b> Judges come over to testify on bills and come over to testify on budgets. We went through a tough time with the courts for a while</p>	
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<p>Speaker of the House, W. Douglas Scamman Jr. Cont'd:</p>	<p>because Sununu appointed a wrong person to the courts. (Speaker of the House) <b>Comment:</b> I feel we're moving past those more problematic times. (Ann Kuster) <b>Response:</b> Oh yes, there's an evolution in all processes. (Speaker of the House)</p> <p><b>Comment:</b> Senate President Gatsas felt there is still a degree of rancor among the Legislature about the Claremont decision. (Andy Peterson) <b>Response:</b> When you start defining "adequate education" you're overstepping the bounds. When members of the Legislature wanting more money in their communities and throw their hats in. As long as it has "adequacy" as a red flag, it is used by some to get more money than they should have (Manchester is one.) The state property tax is where Legislators are trying to get more money. Two communities, Londonderry and Merrimack got tucked to it. One of the bills gave more money than the total education budget. The two points together do have a thread connecting them, the word "adequacy." (Speaker of the House)</p> <p><b>Question: Regarding Claremont, who decides which branch a purview is? (Andy Peterson)</b> A: The Court is one co-equal branch that puts on a Ref's uniform and makes the call. (Speaker of the House)</p> <p><b>Question: Do you sense that this causes a strain among the branches? That the Court is the one to do it? (Andy Peterson)</b> A: The Court has always done it. That doesn't bother me. They're the ones that have to decide the amicus brief is done correctly. We have the same Constitution as MA, except we changed one area. (Speaker of the House)</p> <p><b>Question: Who's fit to serve as a Judge? (Ann Kuster)</b> A: That's right back in the Legislature. Right in terms of</p>	
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<p>Speaker of the House, W. Douglas Scamman Jr.          Cont'd:</p>	<p>constitutionality but I wonder if it's right to this day. (Speaker of the House)</p> <p><b>Question from the Speaker: We got past two competing committees because of a Judicial decision. Do you think a lot of people don't think the Court should be arbiter of that kind of thing?</b></p> <p>A: No. Impeachment. Claremont was the raw nerve that set off the whole impeachment. (Andy Peterson)</p> <p><b>Speaker:</b> There are people here who ensure the Constitution. It's brilliant the way it's written.</p> <p>I'm very comfortable with my relationship with the Court. There's that one thread of a problem. Once we get beyond that, OK.</p>	
<p>Next NH Citizens on the State Courts Commission Meeting:</p>	<p>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 <b>January 17, 2005.</b></p>	<p>The Third Branch sub-committee will meet formally at the next NH Citizens on the State Courts Commission Meeting on January 17, 2005</p>