

Who will make courts accountable if lawmakers can't?

*This letter is used with the permission of the original author,
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In the aftermath of the much publicized impeachment trial of Chief Justice David Brock, and the issues brought to light surrounding that event, many believed that the Court would be sensitive to the public's perception of their practices and would become much more vigilant about being open and accountable. Apparently such is not the case. Indeed, we have presently witnessed a string of increasingly offensive events through which the Courts have demonstrated their disregard of the boundaries within which they are Constitutionally constrained to operate.

First we had Justices Broderick and Duggan intervening on behalf of Judge Brock with the Judicial Conduct Committee. The dust had hardly settled on that controversial act when Superior Court Chief Justice Walter Murphy announced that jury trials would be suspended in five of the next fifteen months for lack of funds. The Legislature was still reeling from the audacity of that act when the story hit the press about the courts expenditure of \$20,000 for furniture for new court offices, as well as other questionable expenses.

As we in the Legislature were trying to sort out the appropriate response we thought that some of the answers to what was going on would be revealed when we received the results of the Legislative Budget Assistant's audit of the courts which was recently resumed. The work of auditing the courts was put on hold last year during the impeachment proceedings. Last week, unbelievably, the Court sent a letter to the chairman of the Legislative Performance Audit and Oversight Committee saying that, although they would cooperate with a fiscal audit, they "...must decline to submit to a general performance audit of the judicial branch", thus closing the door to further Legislative review of their administrative practices.

A performance audit will not unduly intrude on the courts judicial independence. It would not, and cannot, look at either the decisions of the court or the decision making process. The purpose of the legislature's audit is to look at administrative and operational functions. The focus would be whether or not the AOC management and current court management practices promote efficient and effective operations. The courts now assert that these are "...functions over which the legislature has no authority."

The courts once again misinterpret the "separation of powers" clause in Part 1, Article 37 of the New Hampshire Constitution to serve their own interest in order to prevent the Legislature from performing its constitutional obligation to oversee the workings of the judicial branch. The performance audit is an important tool for the Legislature to use and reflects the exercise of the checks and balances that are so important for free government.

The latest attempt by the courts to again close the door to public scrutiny of their operations is an insult to the people they are appointed to serve. No branch of government can be allowed to exempt itself from assessment and accountability to the public. If it's not the job of the Legislature to watch the courts, then who would do so on behalf of the people?

There is no agency or branch of government that should expect to have a \$120 million dollar budget with absolutely no public accountability. It's as if the courts are saying to us, "Just appoint us for life and don't review our performance; give us what we ask for in our budget with no line item veto; and do not ask us to let

you review whether or not we are making wise spending decisions". This arrogant attitude and outrageous behavior is, and should be, totally unacceptable to the citizens of this State.