



Meddlesome solons are out of order

By Charles D. Chieppo

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The drafters of the Massachusetts Constitution couldn't have been clearer. Section XXX (30) reads, "the legislative department shall never exercise the executive and judicial powers, or either of them."

For months, the news has been full of reports about the legislature's escalating campaign to usurp power from the commonwealth's judiciary. Last year, they took the right to hire probation officers away from judges and gave it to the commissioner of probation, John J. O'Brien.

A few months later came the news that legislators routinely ignore the judiciary's annual budget process and create scores of positions that court officials never requested. Between 1998 and 2001 alone, these patronage hires cost Massachusetts taxpayers more than \$50 million.

The full cost of this practice can't be measured in dollars alone; it has also resulted in a profoundly inequitable allocation of resources among the commonwealth's courts. Courts like the Boston Municipal Court that enjoy cozy relationships with powerful legislators are rewarded with an embarrassment of riches, while far busier courts like the Springfield District Court get by on crumbs. As a result, an aggrieved citizen in Springfield must wait far longer for access to justice than a Boston resident. That delay could be the difference between gaining relief and losing the business for a sole proprietor in Springfield.

Instead of pulling back and waiting for the bad publicity to subside before continuing its campaign for total control of the courts, the legislature responded with an even more brazen power grab. During the recent House budget debate, Rep. Angelo Scaccia (D-Hyde Park) filed an amendment that would have stripped judges of the right to hire even their own secretaries and law clerks. A group of progressive legislators led by Rep. Michael Festa (D-Melrose) mobilized to fight the amendment. His message sent, Scaccia withdrew the ill-conceived amendment before it was debated.

Many view the battle over the courts as yet another example of the scourge of politics, or as a civics lesson on the separation of powers. Either way, they don't see it as something that affects them. But recent events in a Brighton courtroom graphically illustrated the consequences of the current court crisis.

Judge R. Peter Anderson ordered probation commissioner O'Brien into custody after he refused to conduct drug tests that the judge had ordered as part of sentences against two defendants. A result of the legislature's campaign against judges is a probation commissioner willing to challenge even a judge's fundamental sentencing power.

Former Judge James Dolan, author of a recent Pioneer Institute [report on judicial administration in Massachusetts](#), said it best. "We're having separation of powers within the court system, with judges being separated from the clerks and the Probation Department being separated from the judges."

The legislature maintains unparalleled control of the judiciary because of the unique way that Massachusetts funds the judicial branch. We have the only state-funded, centrally managed court system in which the legislature uses 179 budgetary line items to control the activities of each individual court.

The University of Massachusetts' budget is about the same size as the judiciary's, but its funding comes in a lump sum. The University -- not the legislature -- determines how to allocate the funds.

According to the courts the same treatment as UMass may be a simple solution, but it would be excruciatingly difficult to achieve. It would require a critical mass of legislators willing to buck the leadership in order to reduce their own power. The new Senate budget proposal does provide a ray of hope. It shuns micro-management and funds each court department with a single line item.

A permanent solution would also require real reform within the judiciary. To avoid a repeat of what currently happens under legislative control, judicial officials would need to establish a reliable formula for allocating resources between courts based on workload.

And the legislature correctly points to examples of judicial-branch mismanagement. Last November, the House Committee on Post Audit and Oversight released a scathing report on the judiciary's mismanagement of a \$75 million information technology bond bill.

Massachusetts needs an effective judiciary. The only way to get it is through a trade-off. The legislature needs to allow the judicial branch to exercise the powers guaranteed it by the state constitution, but the judiciary must be held accountable for achieving performance measures established together with the legislature.

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