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SEPARATE POWERS–SHARED RESPONSIBILITY:† CONSTRUCTING AVENUES OF INTERBRANCH COMMUNICATION

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INTRODUCTION

In The Federalist No. 78, Alexander Hamilton wrote that the courts must exercise judgment to effect the constitutional intentions of the legislature and must not exercise will to substitute their preferences for those of the legislative body.[1] Since Hamilton first expressed this principle, scholars and jurists have written countless books, articles, and opinions about the separation of powers and how courts should go about exercising their judgment to effect legislative intent. Less has been written about how legislatures and courts can work together to the same end. This article calls for increased efforts to re-evaluate and re-vitalize existing avenues of communication between the legislature and courts in Colorado and other states, and to develop new ones, both formal and informal, to increase the effectiveness and efficiency of state governments.

I. THE NEED FOR INTERBRANCH COMMUNICATION

The Colorado Constitution prohibits any person or persons charged with the exercise of powers properly belonging to one governmental branch from exercising any power properly belonging to either of the others.[2] However, as Benjamin Cardozo wrote, it is not necessary that the "[l]egislature and courts move on in proud and silent isolation."[3] Not only is such isolation unnecessary, but, as Robert A. Katzmann has noted, governance "is premised on each institution's respect for and knowledge of the others and on a continuing dialogue that produces shared understanding and comity."[4] The three branches of government cannot govern without understanding and respecting the others' powers,

† "Separate Powers–Shared Responsibility" was derived from remarks by Joseph R. Quinn, Chief Justice of the Colorado Supreme Court, in 1989. *See infra* note 17.

†† Judge, Colorado Court of Appeals. I thank my summer intern Matt Dardenne for his research, communication and coordination with other government entities, and drafting; and the Court of Appeals editor Wendy Busch for contributing her extraordinary editing skill.

1. THE FEDERALIST NO. 78 (Alexander Hamilton).
2. COLO. CONST. art. III.
3. Benjamin Cardozo, *A Ministry of Justice*, 35 HARV. L. REV. 113, 114 (1921).
4. ROBERT A. KATZMANN, COURTS AND CONGRESS 1 (1997).

constraints, and methods.[5] The premise here is that effective formal and informal interbranch communication helps each branch better understand the workings of others, promotes respect for the separation of powers, can help manage the tensions inherent in our checks and balances system, and improves government.[6]

The factors that tend to discourage communications between courts and legislatures have been thoroughly described by Katzmann, Shirley Abrahamson, Deanell Reece Tacha, and others, and need not be repeated here.[7] However, the need to construct additional avenues of interbranch communication remains and has been increased by recent legislative challenges, efforts to modify statutes through litigation, the accelerated transmission of information, and political rancor.

A. Challenges of Governing

State governments continue to face challenges that include population growth, changing demographics, security concerns, persistent and emerging public health issues, infrastructure demands, budget limitations, the need for economic growth, and public debate regarding fundamental values. In many states, legislative term limits cap the experience level of legislative bodies, yet legislators must effectively address the concerns of their constituents and of the general public. Because term limits increase the turnover rate in the legislature, "institutional memory" is shorter, and programs to provide legislators with necessary information must be repeated more frequently and more efficiently. Tight budgets reduce legislative staff resources and increase the need to rely on private resources that can be accessed by lobbyists.

B. Litigation

When legislatures draft statutes, to what extent do they endeavor to limit or leave open the potential for litigation by the same special interests that were involved in the legislative drafting process? Although legislatures and the judiciary are aware of the effects of the adversarial process and communicate about possible substantive and procedural reforms, legislative discontent with the courts might be assuaged by

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5. Peter M. Shane, *Policy at the Intersection of Law and Politics: Panel One: When Inter-Branch Norms Break Down: Of Arms-For-Hostages, "Orderly Shutdowns," Presidential Impeachments, and Judicial "Coups,"* 12 CORNELL J.L. & PUB. POL'Y 503, 506-08 (2003).

6. Robert A. Katzmann, *The Underlying Concerns*, *in* JUDGES AND LEGISLATORS: TOWARD INSTITUTIONAL COMITY 10 (Robert A. Katzmann ed., 1988).

7. *See* Shirley S. Abrahamson, *Remarks of the Hon. Shirley S. Abrahamson Before the American Bar Association Commission on Separation of Powers and Judicial Independence*, 12 ST. JOHN'S J. LEGAL COMMENT. 69, 80-91 (1996); Shirley S. Abrahamson & Robert L. Hughes, *Shall We Dance? Steps for Legislators and Judges in Statutory Interpretation*, 75 MINN. L. REV. 1045, 1046-47 (1991); Katzmann, *supra* note 4, at 4-7; Robert A. Katzmann, *Bridging the Statutory Gulf Between Courts and Congress: A Challenge of Positive Political Theory*, 80 GEO. L.J. 653, 655-56 (1992); Deanell Reece Tacha, *Judges and Legislators: Renewing the Relationship*, 52 OHIO ST. L.J. 279, 281 (1991).

broader recognition that the general public, corporations, and organized advocacy groups often continue their efforts to obtain laws favorable to them by filing lawsuits that seek to narrow or broaden the statutes' scope. Thus, like lobbyists, litigants and their advocates are active participants in the lawmaking process.[8]

And, although legislators are aware that, regardless of litigants' goals, the courts will interpret and apply the laws they draft, how many know or are attentive to the canons the courts will use to interpret those laws?[9] As Professor Kagan has observed, after losing in the courts, some litigants again lobby legislatures to revisit the statutes to undo the courts' interpretations.[10] After the legislature revises a statute, the policy debate can again return to the courts.

C. *Information Highway*

Although state legislatures have faced demanding challenges throughout American history, since the creation of the World Wide Web in 1991 and the proliferation of dial-up and high speed Internet service since 1995,[11] our governments face these challenges in the fastest communications environment in history and, in turn, under increased public scrutiny and involvement. The decisions and actions of all branches of government are disseminated at lightning speed and are swiftly analyzed and debated in the traditional media and rapidly growing cyber-media.[12]

D. *Political Rancor*

There are, have always been, and always will be, groups, citizens, and legislators who believe court decisions are frequently based on political views, rather than legal principles. Recent criticism of controversial court decisions has been vociferous.[13] Reflecting anger, distrust, and

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8. ROBERT A. KAGAN, MAKING POLICY, MAKING LAW: AN INTERBRANCH PERSPECTIVE 14 (Jeb Barnes & Mark C. Miller, eds., 2004).

9. Richard A. Posner, *Statutory Interpretation—In the Classroom and in the Courtroom*, 50 U. CHI. L. REV. 800, 806 (1983). Posner has also observed that:

> [T]he [basic] reason why statutes are so frequently ambiguous in application is not that they are poorly drafted—though many are—and not that the legislators failed to agree on just what they wanted to accomplish in the statute—though often they do fail—but that a statute necessarily is drafted in advance of, and with imperfect appreciation for the problems that will be encountered in, its application.

Id. at 811.

10. KAGAN, *supra* note 8, at 14.

11. Robert Hobbes Zakon, Hobbes' Internet Timeline v8.2 (2006), http://www.zakon.org/robert/internet/timeline/#1990s.

12. At the same time, public confidence in the United States Congress and the United States Supreme Court has fallen dramatically. Frank Newport, *Americans' Confidence in Congress at All-Time Low*, THE GALLUP POLL, June 21, 2007, *available at* http://www.galluppoll.com/content/?ci=27946 (Americans with a "great deal" or "quite a lot" of confidence in Congress at 14%, down from 22% in 1997 and one of the lowest ratings for any institution tested in 30 years; ratings for the U.S. Supreme Court were 34%, down from 50% in 1997; for the President 25%, down from 52% in 2004).

13. In April 2005, U.S. House Majority Leader Tom DeLay of Texas caused the U.S. Congress and federal courts to become involved in the case of Terri Schiavo. After the federal courts

misunderstanding of the judicial process, rhetoric of this sort tends to increase the politicization of the judicial system, rather than reduce it. It also promotes public disrespect for the rule of law and a co-equal branch of government. That is not to say that courts do not err, or that decisions should not be subject to public debate. Rather, it is to say that the vehemence of current debate regarding the role of the courts increases the need for legislatures and courts to build more avenues of communication and to ensure that they are well used.

In this environment, the public would not be well served by three branches of government moving in proud isolation. To the contrary, our rapidly changing, rapidly communicating world makes interbranch communication more necessary than ever before. Each member of each branch needs to have a sound understanding of how the others function and are evolving in response to new challenges and new perspectives within their branches and in the electorate. Although courts regularly interpret and apply the laws passed by legislatures, do judges know enough about the formal and informal political dynamics of legislative processes?[14]

II. "SEEKING A NEW PARTNERSHIP," CONFERENCES AND A GUIDEBOOK

In 1989, seven organizations sponsored a national conference in Denver, Colorado, entitled "Legislative-Judicial Relationships: Seeking a New Partnership."[15] The conference sought to provide a foundation for more substantial working relationships between state legislatures and the courts. The Honorable Robert F. Stephens, Chief Justice of the Kentucky Supreme Court, commented that the conference was a historic first attempt to discuss openly and candidly the problem that exists between the two branches of government, and that it was an opportunity to create mutual understanding of the problems and attitudes underlying inter-

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declined to exceed their jurisdiction and a special grant of authority from Congress, DeLay said, "The time will come for the men responsible for this to answer for their behavior," and noted that he wanted to "look at an arrogant, out-of-control, unaccountable judiciary that thumbed their nose at Congress and the president." Mike Allen, *DeLay Wants Panel to Review Role of Courts: Democrats Criticize His Attack on Judges*, WASH. POST, Apr. 2, 2005, at A09. That same month, Senator John Cornyn spoke to a nearly empty chamber, criticized a Supreme Court ruling on the death penalty, and said that he wondered whether political decisions by the courts without accountability to the public had resulted in violence against judges. Charles Babington, *Senator Links Violence to "Political" Decisions*, WASH. POST, Apr. 5, 2005, at A07.

14. Posner, *supra* note 9, at 809.

15. The conference was held in Denver, Colorado, on October 1-3, 1989, and was sponsored by the National Center for State Courts, the National Conference of State Legislatures, the Conference of Chief Justices, the Conference of State Court Administrators, the Council of State Governments, and the American Bar Association Judicial Administration Division—Lawyer's Conference. *See* NANCY C. MARON, LINDA K. RIDGE, JOHN MARTIN & CAROL FRIESEN, LEGISLATIVE-JUDICIAL RELATIONS: "SEEKING A NEW PARTNERSHIP:" CONFERENCE SUMMARY REPORT (1989), *available at* http://www.ncsconline.org/WC/Publications/KIS_IntRelConferenceSum.pdf. [hereinafter MARON, CONFERENCE REPORT].

branch friction and to help both branches work together effectively to better serve the public, "which we all serve."[16]

Given the location of the 1989 conference, it is no surprise that Colorado's legislative, judicial, and legal education communities were well represented.[17] Chief Justice Joseph R. Quinn and Colorado Senate President Ted Strickland made welcoming remarks. Chief Justice Quinn stressed that the separation of powers should be viewed as "shared responsibility."[18] Participants were encouraged "to think less in terms of 'separation' and 'power' and more in terms of common goals and communications."[19] Chief Justice Quinn commented that because the courts' interpretation of statutes is based on the words in the statute, it is important that the legislature express its intent as clearly as possible.[20] Edward A. Dauer, a professor at University of Denver College of Law, sounded a similar theme when he said that "despite, or maybe because of, [the] principle of separation of powers, there are numerous needs and opportunities for the legislative and judicial branches nonetheless to interact," but that "in all those interactions, the two branches do not always fully appreciate the constraints, limits, incentives, motivations, and attributes of the other branch."[21]

Among the eight recommendations that emerged from the conference was a recommendation to hold regional and state conferences, similar in format to the national one, to focus on the relationships between individual state legislatures and courts.[22]

In 1991, regional conferences were conducted in Helena, Montana,[23] and Boston, Massachusetts.[24] The project staff conducted follow-

16. LINDA K. RIDGE, DONNA HUNZEKER, ANTOINETTE BONNACI-MILLER & MARY FAIRCHILD, LEGISLATIVE-JUDICIAL RELATIONS: "SEEKING A NEW PARTNERSHIP:" A GUIDEBOOK FOR LEGISLATIVE-JUDICIAL RELATIONS 8 (1992), *available at* http://www.ncsconline.org/WC/Publications/KIS_IntRelPartnership.pdf [hereinafter RIDGE, GUIDEBOOK].

17. State Senator Dottie Wham and University of Denver College of Law Professor Robert B. Yegge were on the advisory planning committee. MARON, CONFERENCE REPORT, *supra* note 15, at app. C. The faculty included Professor Edward A. Dauer of the University of Denver College of Law; Honorable Jean E. Dubofsky, former associate justice of the Supreme Court of Colorado; Honorable Richard D. Lamm, Director of the University of Denver Center for Pub. Policy and Contemporary Issues; and former Governor of Colorado; Gene Murrett, Circuit Executive for the Tenth Circuit Court of Appeals; Honorable Joseph R. Quinn, Chief Justice of the Supreme Court of Colorado; and Honorable Ted Strickland, President of the Colorado State Senate. *Id.* Attendees included State Representative Marleen Fish and Chief Judge Aurel M. Kelly of the Colorado Court of Appeals. *Id.*

18. MARON, CONFERENCE REPORT, *supra* note 15, at 14.

19. *Id.*

20. *Id.* at 38.

21. RIDGE, GUIDEBOOK, *supra* note 16, at 1-2.

22. MARON, CONFERENCE REPORT, *supra* note 15, at 21-22.

23. RIDGE, GUIDEBOOK, *supra* note 16, at 33. Participants were from Montana, North Dakota, South Dakota, Wyoming, and Idaho. *Id.*

24. *Id.* Participants were from Connecticut, Indiana, Kentucky, Maine, Massachusetts, Michigan, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, and Vermont. *Id.*

up interviews of regional conference participants and reported that participants frequently mentioned "the need to spread knowledge and understanding of the issues critical to interbranch relations 'through the ranks.'"[25] According to the conference report, "[t]here was considerable disagreement between legislators and judicial officials about how much communication exist[ed] between the branches [at that time], and what the inducements and impediments to more effective communication might be."[26]

And in 1992, Linda K. Ridge, with others at the National Center for State Courts, prepared "A Guidebook for Legislative-Judicial Relations," which, among other things, provides guidance about how to organize a conference on legislative-judicial relations.[27]

III. WISCONSIN'S COMMISSION ON THE JUDICIARY AS A CO-EQUAL BRANCH

In 1995, Wisconsin State Bar President David Saichek created a Commission on the Judiciary as a Co-Equal Branch of Government.[28] The commission sought to address, among other questions, whether the judicial branch was working well with the other two branches of government.[29] The commission was divided into five committees, one of which addressed interbranch relations.[30]

The commission reported concerns about the relationship among the three branches, including "the need for better understanding by members of the executive and legislative branches of what the courts can and cannot do, as well as what must be done to help the judiciary function more effectively."[31] It also reported concerns that the judiciary needed to be more assertive in understanding the process of legislating.[32] The commission recognized that the legislative and executive branches can be influenced by misconceptions among the public about the judicial branch, and that education about the judiciary's role and independence is vital to all branches.[33] In my view, however, there is an even greater danger that members of the legislative and executive branches who lack accurate understanding about the courts can, and do, negatively influence public confidence in their government and, in particular, in the fairness and impartiality of our courts.

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25. RIDGE, GUIDEBOOK, *supra* note 16, at 34.
26. MARON, CONFERENCE REPORT, *supra* note 15, at 7.
27. *See generally* RIDGE, GUIDEBOOK, *supra* note 16.
28. COMMISSION ON THE JUDICIARY AS A CO-EQUAL BRANCH OF GOVERNMENT, STATE BAR OF WISCONSIN, FINAL REPORT AND RECOMMENDATIONS 12 (1997), available at http://www.wisbar.org/AM/Template.cfm?Section=Research_and_Reports&Template=/CM/ContentDisplay.cfm&ContentID=17447 [hereinafter COMMISSION ON THE JUDICIARY].
29. *Id.*
30. *Id.* at 13.
31. *Id.* at 21.
32. *Id.*
33. *Id.*

IV. AVENUES OF COMMUNICATION IN COLORADO

In October 1990, the State Justice Institute awarded a grant[34] and the Colorado General Assembly appropriated funds to the Colorado Judicial Branch to conduct Project Vision 2020: Colorado Courts of the Future.[35] Eighty Coloradans spent more than a year considering various issues, including the relationship between the courts, the General Assembly, and the executive branch.[36]

One Project Vision 2020 task force that considered the structure of the state courts included professors, state representatives, state senators, judges, and court administrators.[37] The task force envisioned better relationships between the General Assembly and the courts, and also recommended inviting the executive branch into discussions.[38] It called for the creation of an Interbranch Commission consisting of the Governor (or a designee or alternate), the Chief of Staff of the Governor, the majority and minority leaders of the state senate and house, the Chief Justice (or a designee or alternate), the State Court Administrator, one private citizen appointed by each of the three branches, and two private citizens to be chosen by the three appointed citizens members.[39] One of the five appointed private citizens would be elected by the entire commission to serve as Chair.[40] The task force envisioned that the commission could be established by constitutional amendment, statutory action, voluntary action by each branch, or another informal, voluntary method.[41]

The task force acknowledged that the principles of separation of powers and checks and balances must continue, and emphasized that the purpose of "an Interbranch Commission would not be to reduce the independence, autonomy, and customary responsibilities of each of the branches of government."[42] The task force concluded that the state should follow the principle that the three branches are "separate but not separated."[43] However, such a commission does not currently exist.

Since then there have been other task forces and formal avenues of communication. The General Assembly has a tradition of inviting the

34. STEERING COMMITTEE, PROJECT VISION 2020: COLORADO COURTS OF THE FUTURE, REPORT TO THE COLORADO SUPREME COURT 1 (1992) [hereinafter VISION 2020]. The grant was awarded shortly after Chief Justice Joseph R. Quinn stepped down as Chief Justice (though he remained an associate justice until 1993) and Chief Justice Luis Rovira assumed those duties.

35. *Id.*

36. Letter from Laurence W. DeMuth, Jr., Chair of Steering Committee, Vision 2020: Colorado Courts of the Future, to Hon. Luis D. Rovira, Chief Justice, Colorado Supreme Court (Mar. 25, 1992) (on file with Westminster Law Library, University of Denver Sturm College of Law).

37. VISION 2020, *supra* note 34, at 62.

38. *Id.* at 77.

39. *Id.* at 79-80.

40. *Id.* at 80.

41. *Id.*

42. *Id.* at 78 (emphasis in original).

43. *Id.* at 79 (quotation omitted).

Chief Justice to address the Assembly regarding the state of the judiciary at the beginning of each legislative session.[44] These addresses typically include information about the structure of the judicial branch, caseloads of its several components, the challenges it faces and anticipates, the initiatives it has undertaken, and legislation it intends to request.[45] The Office of the State Court Administrator maintains communication with the General Assembly throughout the year, especially with regard to the administration of the courts and proposed legislation.[46]

In 2001, the courts, the legislature, and the executive branch participated in the Governor's Task Force on Civil Justice Reform,[47] which resulted in legislation that added twenty-four new district court judgeships.[48]

From 2005 to 2007, at least two legislators participated in the Respondent Parents' Counsel Task Force Colorado, which Chief Justice Mary Mullarkey created. The task force reviewed issues facing respondent parents' counsel, and made recommendations to the Supreme Court and the Colorado General Assembly.[49]

In 2006, a legislative audit report was highly critical of fees charged by guardians and conservators.[50] As a result of the report, the Chief Justice established the Protective Proceedings Task Force, and charged it with the task of establishing effective procedures and controls for administering and monitoring conservatorships.[51] The task force issued a draft report in September 2007.[52]

In addition to these efforts by the government branches themselves, the Colorado Bar Association has sponsored a half-day program at the beginning of some legislative sessions to provide new legislators with a primer regarding the structure and role of the courts.[53] The Colorado

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44. *See, e.g.*, Mary Mullarkey, Chief Justice, Colorado Supreme Court, State of the Judiciary Address to the General Assembly of Colorado (Jan. 12, 2007).

45. *See id.* at 1.

46. *See* Office of State Court Administrator, Colorado Judicial Branch, http://www.courts.state.co.us/exec/scaoindex.htm.

47. *See* GOVERNOR'S TASK FORCE ON CIVIL JUSTICE REFORM, FINAL REPORT (July 2000), *available at* http://www.state.co.us/cjrtf/report/report.htm.

48. *See* Laird T. Milburn, *CBA President's Message to Members: Citizen's Justice Conference*, 30 Colo. Lawyer 45 (Aug. 2001).

49. RESPONDENT PARENTS' COUNSEL TASK FORCE COLORADO, FINAL REPORT TO THE CHIEF JUSTICE OF THE COLORADO SUPREME COURT 10-35 (2007), *available at* http://www.courts.state.co.us/supct/committees/courtimprovementdocs/Final_Report_9_24_07.pdf.

50. PROTECTIVE PROCEEDINGS TASK FORCE, REPORT TO CHIEF JUSTICE AND STATE COURT ADMINISTRATOR 4 (2007), *available at* http://www.courts.state.co.us/exec/Probate/ReporttoChiefJusticeStateCourtAdministratorFeb282007%20with%20no%20attachments.doc.

51. *Id.*

52. *See* PROTECTIVE PROCEEDINGS TASK FORCE, DRAFT REPORT (2007), *available at* http://www.courts.state.co.us/exec/Probate/SummaryReportDRAFTSept122007.doc.

53. Colorado Bar Association, 3d Annual Legislative Symposium: Colorado's Justice System (Oct. 20, 2005). The last program was conducted at the beginning of the legislative session in Janu-

Supreme Court and the Colorado Bar Association have also supported the formation of the Colorado Access to Justice Commission, which develops, coordinates, and implements policy initiatives to expand access to and enhance the quality of justice in civil legal matters for those who encounter barriers in accessing Colorado's civil justice system.[54] The Access to Justice Commission includes representatives from all three branches of government.[55]

Each of these communications has proved its value. And more can be done, both formally and informally.

V. POSSIBILITIES

The national, regional, and state programs, as well as the authors mentioned earlier, have provided exceptional guidance about ways to increase productive communications among the branches of government. There has been increased communication at the federal and state levels. Colorado has done well. Project Vision 2020, the State of the Judiciary addresses to the General Assembly, the legislative communications work of the Office of the State Court Administrator, and joint task forces have laid a path. Some judicial districts have also found ways to meet with state legislators and local officials.[56] Yet, more can be done and the citizens will benefit when more is done.

2008 is an election year. In 2009 there will be a new president, a new U.S. Congress, a new Colorado General Assembly, and new legislatures in most states. And 2009 will be the twentieth anniversary of the 1989 "Seeking a New Partnership" national conference. We do not need new conferences to design new avenues of communication; rather, we need national, state, and regional conferences that bring participants together to set in motion activities that will maximize the benefits of existing avenues of communication and to establish those that have already been designed but not yet built. Such conferences could also create interstate collaborations that enable state governments to benefit from the experiences of other states. What follows is a summary of some of the work from earlier conferences.

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ary 2005; there was no program at the beginning of the legislative session in 2007. *Id.* The format of the program is educational, but its brevity limits the amount and scope of information that can be presented. In addition, attendance by legislators is voluntary, and, as a result, it is often limited. The program should be resumed and expanded in 2009, and returning incumbent legislators should urge better attendance by all legislators. Attendance by judges other than the speakers would also help to foster continuing informal communication between judges and legislators.

54. *See* Access to Justice Commission, Colorado Bar Association, http://www.cobar.org/index.cfm/ID/20129/DPWAJ/Access-to-Justice-Commission/.

55. *Id.*

56. RIDGE, GUIDEBOOK, *supra* note 16, at 22-24.

A. Education

Our executive, legislative, and judicial officials are all busy carrying out the work of the people. Although the majority of officials come to their positions with significant knowledge, there is no assurance that they know how each branch operates or how the work of each branch relates to that of the others.

As in most efforts to achieve excellence, education and training are essential foundations. And, indeed, all the conferences discussed here have called for more interbranch education.[57] They have called for educational programs that orient branch officials and staff to the procedures, perspectives, and problems of the other branches.[58] The public would benefit if judges knew more about the formal and informal political dynamics involved in the initiation, drafting, consideration, and passage of statutes. The public would also benefit if legislators knew more about the courts and how they interpret statutes and constitutions.

Educational efforts could also facilitate formal and informal interbranch communication by including information about the separation of powers, ways to engage in productive communications without undermining the separation of powers, and the political and ethical constraints of officials in the other branches. Joint educational conferences would promote a better understanding about how each branch is approaching new challenges. Practical education could be achieved through "ride-along" programs where judges invite state legislators, as well as local elected and appointed officials, to observe court proceedings, and where state legislators invite judges to observe public meetings with constituents, as well as legislative committee meetings and hearings.

And as part of the Courts in the Community program,[59] Colorado's appellate courts hear oral arguments in all parts of the state. Local bar associations often host small social functions in conjunction with these events. The courts and bar associations could use these and other opportunities to bring together state and local members of all the branches.

Such education is likely to promote new ideas for formal avenues of communication to augment the State of the Judiciary addresses and communications through the Office of the State Court Administrator.

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57. *See, e.g.*, MARON, CONFERENCE REPORT, *supra* note 15, at 8-9; RIDGE, GUIDEBOOK, *supra* note 16, at app. B, app. C.

58. *See, e.g.*, MARON, CONFERENCE REPORT, *supra* note 15, at 26; RIDGE, GUIDEBOOK, *supra* note 16, at app. B, app. C.

59. Colorado Judicial Branch, Courts in the Community, http://www.courts.state.co.us/exec/pubed/courtsinthecommunity.htm (last visited Nov. 2, 2007).

B. Formal Avenues

New formal avenues should seek to promote efficiency and effectiveness in governmental processes. For example, can legislators draft statutes that are less vulnerable to the risks of modification through litigation and are more likely to be read and understood consistently with legislative intentions and purposes? Are judicial impact statements being used effectively? Are joint committees and task forces being utilized effectively? Might joint conferences be held regarding interbranch relations and emerging public issues? Could legislators be invited to attend or make presentations at annual judicial education conferences? Are there effective means for the courts to draw the legislature's attention to statutory provisions that could be made more clear and, thus, reduce or avoid litigation and the need for judicial interpretation? Are existing avenues of communication primarily at the highest levels of each institution? Are there ways to bring more judges and legislators together throughout each branch? How can the leadership of the legislature and judiciary increase attendance at bar association programs that inform legislators about the courts and the way courts interpret statutes? How can such programs facilitate continuing communications between legislators and judges?

C. Informal and Social Contacts

Increased education and formal communications may well result in increased personal contacts and informal communications between officials of different branches. Such communications would increase the potential for new ideas, and perhaps more important, for mutual understanding and respect. In addition, although officials from each of the branches often attend the same community events, how much more might the public benefit if all three branches gathered at the beginning of each legislative session for a luncheon that celebrated the founders' design of three branches forming one government?

CONCLUSION

"The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self[-]appointed, or elective, may justly be pronounced the very definition of tyranny."[60] The task of public officials is to preserve the separation of powers and also to govern effectively and efficiently. We cannot do this without knowing the powers, dynamics, and constraints of the other branches with which we share that responsibility. We could do it better if the avenues of communication, formal and informal, are available, known, and used by each branch and by individual legislators and judges. Avenues that currently address changes in substantive and pro-

60. THE FEDERALIST NO. 47 (James Madison).

cedural laws could be supplemented with avenues that increase mutual understanding and respect for the unique dynamics of the legislative and judicial processes, and the commitment of those in each branch to serve the public in accordance with their sworn duties.

The national, regional, and state conferences in 1989 and the early 1990s designed ways to increase interbranch communications. As we approach the twentieth anniversary of the 1989 conference, perhaps it is time for a series of smaller regional and state interbranch conferences, not to design avenues of communication, but to begin the work of broadening existing avenues of communication, augmenting them with others that have been designed but not yet built, and promoting increased use by individual legislators and judges. It is absurd to think that we could govern effectively and efficiently without them. Yet, too often, it seems we "move on in proud and silent isolation."