

The Dancing Judicial Zen Masters:

How many judges does it take to see the future?

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"Why are the (American state) courts so far out into the future, and what can be done to nudge them even farther out?" I posed this question to seven people who have been involved in judicial foresight activities over the last several years for their consideration in three panels held during the World Future Society's General Assembly in Washington, DC, June 1993. ¹

Waves of Judicial Foresight

There is a mounting wave of judicial foresight activities which began as a slight ripple when Hawaii held the first judicial foresight conference in 1972 [1], grew into a mighty swell during the national conference on The Future and the Courts, held in San Antonio, Texas in May 1990 [2], and continued to surge during a national gathering in Nashville, Tennessee in April 1993 which brought together representatives from the many state courts which had by that time conducted some kind of futures activity with representatives from the nineteen state courts which had not. As a consequence of the Nashville meeting, virtually all of the American state judiciaries have now undertaken or are planning some kind of a futures activity [3].

While many organizations throughout the US and across the globe have engaged in various futures activities, nothing comparable to this flurry of futures activities in state courts has happened for state legislatures, state executives, any branch of the US national government, in the private sector, or among any similar set of institutions anywhere in the world.

Of course, I do not mean to imply that American state courts are sufficiently future-oriented, or that judges are flaming futurists eagerly and boldly going where no one has ever gone before. ² Paraphrasing an old advertising slogan that will never be heard on the public airwaves ever again, I believe that while the courts are only a "silly millimeter" farther into the future than anyone else, that "silly millimeter" makes all the difference in the world. [4]

Why Judicial Foresight?

What are the reasons for the comparatively advanced future-orientation of the American state courts? Aren't courts the most conservative, backward, and unpopular branches of a generally unpopular system of American governance? Aren't judges, and lawyers of whom they are for the most part merely a subspecies, the most hated group of people in America. Do you want to make America a better place? Then, "first, kill the lawyers" say many Americans, perhaps consciously (mis?)quoting Shakespeare.

It is not my intention here to present all of the evidence necessary to support my contention that the American state courts are in fact rather far out

into the future. Please read and reflect on the material cited above and elsewhere for the evidence I would otherwise marshal for you.

Instead, I want to present here a composite of the answers the panelists at the World Future Society General Assembly and myself, plus several members of the audience gave to the question I posed.³

Present Despair

One reason American state courts take the future seriously is their sheer despair over their condition in the present. Courts have been asked to do more and more things with fewer and fewer resources being available to them. The budgets of police and prisons have swollen enormously in recent decades, but the budgets of the courts, as a percentage of state and local budgets, has barely risen at all. Thus the courts, desiring to provide the best service possible with the resources available to them, have out of necessity embraced all ways of doing more with less. More than the other two branches and most departments of government, the courts have been forced to innovate and to seek out innovative solutions to problems new and old. And so, as the saying goes, "When all else fails, call a futurist."

That is why I say that American judges are Judicial Zen Masters: they have learned how to take on huge, seemingly overpowering problems by using their wits, speed, agility, small size, and the mass and inertia of their opponents, to their own advantage. Rather than bulking up to the size of their adversaries, they leverage the weight of their opponents themselves to subdue them.

Or, at least they try to do so.

Systems and Managers

Over the past several decades, more and more of the American state courts have come to understand that they can and should operate as an integrated system rather than as a loose collection of independent entities. The Standards Relating to Court Organization, first published by the American Bar Association in 1974 and revised in 1990; the 1982 ABA Standards Relating to Jury Use and Management; and the 1985 ABA Guidelines for the Evaluation of Judicial Performance, and other similar developments have led the courts to strive for standards of professional excellence and efficiency unmatched by other professions or branches of government.

The first professional state court administrator began service in New Jersey under Chief Justice Vanderbilt. Now there are over one thousand professional court administrators in every state and many local judiciaries who themselves bring standards and expectations of fairness and excellence to the administration of the courts.

Planning

For many courts, the step beyond more systematic and integrated judicial administration of the 1960s and 70s was the step towards strategic planning in the 1970s and 80s, and by now many courts have adopted (or are seriously considering) planning as a routine part of their judicial administration. The steps beyond planning, already taken by some jurisdictions, are first towards futures forecasting, and then towards futures

envisioning and the routine incorporation of futures research into their office of planning and/or administration.

Forecasting

This has in large measure been brought on by increased workloads (in numbers, size and complexity) laid on the courts, and the necessity of seeking ways to manage, and to try to predict, future increases (or decreases) in it. Courts have tried to forecast case loads so as to assign judges to courts more rationally. Moreover, it often has taken as much as twenty years to move from the first awareness that a new courtroom will be needed to the day when the first case can be heard in it, encouraging more and more administrators to try to forecast demand in order to shorten the time it takes to build a new courtroom.

At the same time, technological changes are also driving the need for planning and forecasting: what new technologies might be employed in the administration of justice, not only to speed up and make more efficient the way things are done now, but also to replace long-standing methods? For example, is "building new courtrooms" or "creating new judgeships" the best way to meet caseload demand? Is it possible that new technologies might render "courtrooms" (and "judges"?) obsolete?

For example, are no-fault divorces clogging up the judicial system? Then why not install no-fault divorce kiosks where one or both parties to an unhappy marriage can push-button their way through to divorce as easily as they might deposit and withdraw money, or check the balance in their account, via a convenient ATM. Science fiction? Not at all! It is possible under certain circumstances and places in Arizona today. Kiosks are similarly available in California to pay uncontested parking tickets.

Less spectacularly, technology is now used for automated case flow management; computer-aided transcriptions; telephone hearings; video depositions, arraignments, and presentation of evidence; interactive video trials, sentencing, and parole hearings; electronic filings; calculating child support; juror payments; real-time translations; public information; public access to court records; computer-assisted legal reasoning; interactive distance education of judicial staff; and many other uses almost daily.

Similarly, perhaps new ways of settling disputes unrelated to technology can be adopted or developed. Isn't that what ADR (Alternative Dispute Resolution) is all about? Isn't that also behind the demands of many ethnic groups for "culturally-appropriate dispute resolution techniques?" How can anyone assume that the courtroom of the future will, or should, look anything like the courtroom of the present? Or are these merely passing fads, and will the courtroom of the year 2093 look like the courtroom of 1993 just as the courtroom of 1993 looks like the courtroom of 1793? Indeed in some situations it is the courtroom which was built in 1793 since no funds have been found to build a newer one.

Beyond Forecasting

Inquiring minds want to know! And once minds begin wondering about doing things differently from the way they are done now (and not just doing the present things more efficiently or effectively) there is no way to stop

them from widening the scope of their concern beyond the existing boundaries of the "judiciary" to encompass all of the institutions with which they work: prosecutors and defenders, other lawyers, police, corrections, parole, social workers, law schools, legislators, administrative personnel, federal officials, business organizations, law and judicial improvement/support/critical groups, former--present!--criminals, the general public, the "causes of crime".... Once starting, there is no easy place to end, because everything and everybody is somehow a part of the judicial system, and wants to have and should have a say in determining the future of the courts.

Proactive

Also given the increasing caseload and the perception of a society increasingly out of social control, and in some places already approaching violent anarchy, more and more judges are realizing they must be proactive and not reactive. It is not enough to just wait and decide cases as they are brought before them. To the extent they must be passive, to that extent they will be impotent and overwhelmed. Better that judges come down off the bench and, with other citizens and governmental groups, become active in creating a more equitable society where crime and other antisocial behavior becomes the exception and not the rule.

Third Branch of Government

One of the things judicial administration and planning has done is make the judiciary aware that it is, or should be, a fully equal part of the tripartite system of government. Until recently, that has only been rhetoric, with most of the power going to the legislatures or governors. Several judiciaries (Hawaii is certainly one) have taken action to see that they are as truly equal to and independent of the other two branches as the other two are to each other (there is, after all, also "checks and balances" as well as "the separation of powers").

Nonetheless, in the United States it is often said that "Law is what the judges say it is." This reflects the unusual power which all judges at all levels have because of "judicial review." So powerful are judges, in my judgment, that when I teach survey courses on American Government, I start, not as most textbooks do (apparently following the order in the US Constitution) with the Congress, followed by the Executive, and then with the Judiciary. I place the judiciary first, as the most powerful branch of government.

Whether the judges are "liberal" or "conservative," the American judiciary--state and federal--is active. While "judicial self-restraint" may correctly indicate that the courts are less active than they might otherwise be, increasingly over the years (and not only beginning with President Roosevelt or Chief Justice Warren), courts at all levels have exercised policy making in ways seldom found in the judiciaries of other countries--or even in the other branches of US federal and state government.

It can truly be said by the courts that "the buck stops here."

Making Hard Decisions

But why? Why not with the legislators or governors? Increasingly, legislators and governors have preferred not to make the hard, close decisions.

Given the structure of American elections (single member districts, plurality winner takes all), it behooves any elected politician not to make a decision about a problem but instead to mush it around to maximum publicity. To make a decision means to alienate some segment in the population without necessarily gaining the increased support (electoral or financial) of some other segment. Thus the rule in American electoral politics is to avoid making hard decisions if at all possible.

Judges too of course try to avoid making hard decisions, and will often go to great lengths to try to find some way not to take jurisdiction over the tough issues. But once the matter is in court, the judge will eventually decide. If the judge is appointed, or elected for a long term of office, then it is even less difficult for the judge to render a decision.

Judges As Futurists

Increasingly, the kinds of issues judges are asked to rule on involve real disputes--real cases and controversies between real people--but often on matters that the average citizen has never heard about. And if the average citizen were to hear of it, she might consider it to be "science fiction," "far out," and "futuristic." Recent examples which have come to the public's attention after the matter has been brought to the courts have involved disputes over the custody of frozen embryos; the determination of custody with surrogate motherhood and artificial insemination; the definition of death and the right to die, and many more.

Since the average citizen is unaware of the issue, the average legislator is probably also unaware of it, or at least will not take action unless an influential member of his constituency makes him do so. Thus, public policy is not likely to be set on many important public issues by the legislature.

But it is likely to be set by a judge.

Judges then, as a class, are more likely to be aware of cutting edge matters--new technologies, new social movements--well ahead of the average legislator or voter. And thus judges might be more open to receiving information from the future which will enable them to prepare better for the hard issues which will soon confront them.

Legal Education

For better or worse, and by default, judges then tend to be the philosophers and applied ethicists of the American public. The philosophical and moral issues facing many judges almost certainly exceed their formal educational training--certainly very little in law schools promotes deep philosophical and ethical reflection and discourse. Still, legal education is generally rigorous and solution-oriented, like engineering and medicine, perhaps, but unlike many other kinds of American education.

Again, I am not able to say that the education most judges get is especially well-designed or suited to the future-oriented nature of their responsibilities, but it does enable judges to make difficult decisions with a fairly easy conscience.

Longer Time Horizons

One of the clear tragedies of democratic politics as currently structured in the US and elsewhere in the world, is that the time horizon of all elected officials is, and must be, very short (no farther than the next election and usually no farther than the day after the most recent election) while the basis of policy making must be on the desires of the most important (and numerous) group of voters and especially on the interests of their most generous Political Action Committee. Since "the future" neither votes nor has a PAC, no politician from a reasonably contested district can afford to think about the interests of the future except as they are embodied in the interests of the present--which they generally are not.

Similarly, the rules under which American businesses operate also severely discount the future and enormously privilege the very short run.

One of the continuing developments towards professionalism and away from "politics" over the years has seen fewer and fewer judges elected for short terms via partisan ballots, and more and more either elected for longer terms via nonpartisan ballots or (increasingly likely) not elected at all, but appointed for long terms via some "nonpolitical," "professional," or "merit" basis. Thus, compared to other political and economic decision makers in the US, judges tend to have a longer "natural" time horizon. Relatively freed from current pressures, they can think about longer consequences and interests.

In addition, judges of first instance (where a case first enters the judicial system) know that their decisions might be appealed, considered, upheld, or overruled by higher courts, and intermediate courts know that their decisions might be reviewed by even higher courts and on up to the state, or US Supreme Court. The possibility of appeal means that judges render decisions with at least this aspect of the future more or less keenly in mind.

Similarly, the decisions of appellate judges often are written out in long justifying opinions, and often concurring or dissenting opinions are also written. Not only are these decisions then reviewed in the popular press, but more importantly they may be subject to almost endless re-analysis by one or more law journals. Neither other political nor most economic decision makers offer such elaborate justifications for their decisions. And seldom are their stated reasons subject to the kind of analysis routine for judicial decisions.

Support Networks

Over the last twenty or more years a number of organizations have grown up which support various aspects of American state governance. The National Conference of State Legislatures, the National Governors Association, and many similar organizations have (perhaps more than anything else) helped raise the professionalism of American legislative, executive, and administrative personnel generally. Many of these (most notably the Council of State Policy and Planning Agencies, now called the Council of State Governor's Advisors) have also encouraged their colleagues in state agencies to use some kinds of futures research, generally some kind of "environmental scanning" [5]

The state judiciaries have "an unusually dense support network," in the words of Donald Dahlin. There are older organizations such as the American Judicature Society and the American Bar Association, and newer organizations

such as the Institute for Court Management, the National Center for State Courts, the Institute for Judicial Administration, and the National Association for Court Management. Exceptionally important also have been the Conference of State Chief Justices, the Conference of State Court Administrators, the Council of Chief Judges, the National Association of Women Judges, and the American Judges Association. All of these have to some extent--and many to some considerable extent--encouraged individual courts to undertake futures activities.

Serving the Client

The state judiciaries have also been influenced by the recent movement towards TQM (Total Quality Management) and ideas of "Entrepreneurial Government" [6]. They are being encouraged to view the people who come before them as customers and not as subjects. The courts are being told that they must care about what the customer wants, not just what the judge prefers. They must make efficiency and customer satisfaction a higher priority, and not just continue to do things the way they've always been done, or at the convenience of the judge and clerk. Needless to say, the traditional power of judges (and clerks) being what it is, the courts still have a very long to go before they will place the customer first--assuming they should or that even business actually does.

Visionary Leadership

In addition to various structural and professional reasons why the courts are comparatively future-oriented, the role of certain individuals in introducing certain specific judiciaries into futures processes is very important. I believe the first systematic exercise in judicial foresight was in Hawaii in 1972 when a Citizen's Conference on the Administration of Law was convened. Hawaii was a young state then and the Hawaii judiciary had been created pretty much as a copy of the model state judiciary recommended at that time by the American Bar Association. Still there were problems. But there were no other recommended reforms to adopt. What to do? Consider the future! This became an option largely because the State of Hawaii as a whole had just completed a still unequaled exercise in "Anticipatory Democracy" in its "Hawaii 2000" activities of 1969 and 70 [7]. Chief Justice William Richardson and Chief Court Administrator, Lester Cingcade, however, pioneered judicial foresight activities in the American judiciary not just by their 1972 Conference, but more importantly by many subsequent future-oriented activities up through the 1980s [8].

Some years later, in Virginia, Chief Justice Harry Carrico, Executive Secretary (Chief Court Administrator) Robert Baldwin and especially Director of Court Planning, Kathy Mays decided to learn from, equal, and soon surpass Hawaii in judicial foresight activities and processes [9].

Other chief justices, judges, court administrators, and leaders in court reform also took the lead in their areas, but I would have to credit especially Cingcade and Mays with the vision and Richardson, Carrico, and Baldwin with the courage necessary to be the first to make judicial foresight a part of judicial planning and administration, thus making it easier for others to do so. That Cingcade and Baldwin were also Presidents of the Conference of State Court Administrators also lent respectability to their pioneering leadership. ⁴

Professional Futures Research

It also is the case that if futures studies had not come into existence in the 1960s, and specifically if the Hawaii Research Center for Futures Research had not been created by the Hawaii State Legislature and placed at the University of Hawaii for administrative purposes in 1971, there would have been no futures researchers around to respond to the call from the Hawaii, and to some extent, the Virginia judiciary. The HRCFS and the Alternative Futures Option within the graduate program of the Department of Political Science of the University of Hawaii provided interns and employees for the Office of Planning and Statistics of the Hawaii Judiciary.⁵ These interns and employees then turned out scores of short and long term futures reports and a judicial foresight newsletter which inspired similar work in Virginia and elsewhere [10].

Financial Support

But I would be fooling myself and you if I did not say that an absolutely essential ingredient underlying why the American courts have been moderately interested in futures research has been money, primarily federal money for state judicial reform and improvement. First the existence of the Legal Enforcement Assistance Administration (LEAA) in the 1970s funded many state judicial planning efforts. And when the LEAA ended, judicial planning slowed and stopped in some areas.

The single most important source of funds for judicial foresight has been the State Justice Institute, an organization first funded by Congress in 1987 to award grants for the improvement of the administration of justice in the American states. Through the leadership of Bo Torbert, John Daffron, David Tevelin, and Daina Farthing-Capowich, the Board of Directors of the SJI incorporated into its early guidelines a section on the future and the courts, and has directly or indirectly funded most state judicial foresight activities of the 1990s. If judicial futures were to be dropped from SJI funding support, I fully expect that many states would lose interest in the future, in spite of all the structural and individual reasons I have given so far. And yet there appear to be many well-trained and motivated closet judicial futurists quietly integrating future-oriented concepts into their plans and actions, and slowly working up the ladder until they are able to effect the needed changes. Could this be where the Aquarian Conspiracy first or most clearly emerges in the late 20th/early 21st Centuries? I am confident that enough seeds of the future have been planted, and enough of them taken root and grown into sufficiently sturdy bushes, that at least the idea will remain alive until new funding sources are found again.

What's Next?

So what can and should be done to push the American state courts even farther out into the future?

At least the five following things:

1. Demonstrated usefulness. Probably the most important thing to do is to demonstrate the practicality--the immediate usefulness--of judicial

foresight. This is often difficult to do, and is a problem with which all futurists and administrators wrestle: how can you show that by "taking heed of the morrow" you acted more wisely today? How can you show you avoided a crisis or grasped hold of an opportunity which, absent the foresight, you would not have avoided or embraced?

This is especially a problem for the kind of longer range visioning and emerging issues analysis which has been characteristic (in my opinion, correctly) of most of the judicial foresight mentioned above. It is somewhat easier to show that trend analysis (which, in contrast, assesses the more immediate, and more probable, future) has helped (for example) to avoid caseload paralysis by moving judges from one jurisdiction to another, or by hiring new judges in advance of the rising caseload, and the like. It is for this reason that sustainable judicial foresight combines immediate trend analytic methods with longer range alternative futures visioning and preferred futures inventing. It is unfortunately still necessary to show some measure of immediate practical results in order to earn the time and the legitimacy to think of the longer run possibilities.

But it is my contention that futures studies is not in the business of trying accurately to "predict" the future. Futurists are not fortune tellers, and it is imperative that they not fall into the trap of trying to become certified public soothsayers. This is a very sweet, and often lucrative, temptation, because businesses, governments, and ordinary people still wish (and some still believe) that they live in a world where all important events can be foretold--by someone! But we do not live in such a world, and futures studies is not (and should neither pretend to be nor strive to become) a predictive science. Rather, futures studies, and thus judicial foresight, is a participative process by which people learn to widen their horizons by seeing the futures as being multiple, alternative, and subject to human creative invention, rather than singular, inevitable, and predictable.

The usefulness and practicality of the kind of future-oriented processes which have characterized judicial foresight so far should be assessed not by the accuracy or errancy of their forecasts, but by whether or not the participants have become more innovative, open minded, anticipatory, and collectively inspired, cohesive, and proactive. Whether or not they have gained a new sense (and reality) of optimism, commitment, and even control over the present in the light of a new vision of the possibilities, as well as the threats, of the future should be the measure of effectiveness of judicial foresight activities.

2. Routinize. A second urgent, and related task, is for more judiciaries to routinize futures research--to incorporate judicial foresight into their day-to-day administration and strategic planning processes. The Hawaii judiciary was the first state to do this, while the Virginia judiciary has gone well beyond Hawaii in this respect. I am unaware that other state judiciaries have as yet followed suit, though I am confident that they will. One of the reasons for my confidence is that more futures-related tools and processes have been and are being made available to judiciaries so that it is no longer necessary for each judiciary to reinvent the wheel. Especially noteworthy at this time are the Court Futures Manual developed by the Colorado Judicial Department [11]; Reinventing 21st Century Courts, produced jointly by the Hawaii Research

Center for Futures Studies, the Institute for Alternative Futures, and the National Center for State Courts [12], and the report of the 1993 Nashville conference [13]. The futures scanning newsletter of the Supreme Court of Virginia, Future View, is also exceptionally valuable. As more "how to" workbooks, videos, CDIs and other interactive media are developed, it will become increasingly easy for other state judiciaries to incorporate foresight into their routine operations, especially in this lingering era of budgetary constraints.

At the same time, I must admit that there is still something to be said for state and local judiciaries reinventing the futures wheel--engaging in futures activities entirely on their own without following too closely any of the previous footsteps. There are many alternative futures and certainly no single path forward. The more diversity there is in judicial foresight the better, I believe. Still, there is no point in being willfully ignorant of what others have done and found wanting or successful. This kind of information about what works, and what does not, and what more is needed is becoming increasingly abundant, and should encourage other state and local judiciaries to move more quickly, surely, and efficiently into the future.

3. Expand Funding. It is very much hoped that more, and not less, public and private monies will be made available to encourage more and better judicial foresight. As far as I know, the State Justice Institute remains the only funding agent, public or private, which takes futures studies (in contrast to some specific substantive concern about the future) seriously. The SJI can not be expected to continue to carry this burden alone as much as I fervently hope it will continue to support judicial foresight. Other judicial support agencies must assist them in this.

At the same time, other federal, state, and private funding groups, perhaps unrelated to judicial administration, should follow the excellent example of the SJI and offer support for future-oriented activities in areas of their concern. This will be one of the biggest boosts to judicial foresight: that other groups and institutions in American society become more future-oriented themselves; that all groups and institutions come to expect foresight from themselves and each other as a matter of course.

4. Court Futurists. More professional consulting futurists need to emerge and make themselves available to judiciaries, and other groups. One action which I have already initiated is to set up an Association of Court Futurists. This is in clear imitation on the one hand of the other judiciary support groups whose existence has done so much to improve the administration of justice in the states so far, and on the other of the International Association of Police Futurists just recently established.

It is time that futurists working with, or interested in working with, judiciaries get together with judges, court administrators, lawyers and anyone else concerned with improving the quality and administration of justice in the United States and everywhere else in the world by expanding and improving the theories, methods, and use of judicial foresight. Anyone reading these words who is interested in joining such an association please let me know.

5. Future-Oriented Research and Education. Similarly, we each must do more to encourage our universities to establish futures research centers, urging them then to do applied futures research for the benefit of courts in their neighborhoods. At the same time, the broader public needs to be educated (both through the formal school systems, K through graduate school, and through processes of continuing and adult education) in futures theories and methods so that all citizens understand what futures research is, and what it is not, and come to expect foresight from the courts--and from all other aspects of society [14].

When that happy day is finally achieved, then thinking and acting responsibly towards and on behalf of the future will become so much a part of the everyday life of all humans on the planet that all futurists and futures research centers can fade away content in the knowledge that at last the future is in the care of concerned, informed, and loving hearts and hands.

Footnotes:

1. The seven discussants, a circuit judge (John Daffron, Jr.), two court administrators (Gordon Griller and William Lockhart), two court planners (Kathy Mays and John Martin), the executive director of the major source of federal funding for improving the functioning of state courts (David Tevelin), and a person who has conducted several judicial foresight activities for state courts for a private organization long concerned with trying to improve the administration of justice in the United States (Sandra Ratcliff). This essay is almost entirely based on my understanding of the formal and informal statements which these seven people made during the panel discussions. While I sent a draft of this essay to each panelist, and tried to incorporate the many excellent and detailed changes they suggested into the final version, I am solely responsible for the form and style of this document.

2. It is of course important not to overstate the extent to which state judiciaries are future-oriented. Donald Dahlin has recently surveyed the long-range planning efforts of all of the state judiciaries. The title of his essay, which will appear in the Winter 1993 issue of Futures Research Quarterly on judicial foresight, says it all: "Futures Planning in State Courts: On a Clear Day You Still Can't See Very Far." Dahlin concludes that "the plans of every state examined whatever its basic approach and avowed time horizon" reflects "not what a state judicial system in 2020 should look like, but rather what a state judicial system in 1993 would look like based upon current best thinking about state courts" [Emphasis in original]. Dahlin then goes on to list various structural and personnel reasons why "short term perspectives can so overwhelm long range considerations in judicial planning."

Dahlin is correct. For only one example, I worked close up and from afar with the Commission on the Future of Virginia's Judicial System for many months. The final report of the Commission was titled, Courts in Transition. I was invited to give my evaluation of the Commission's report to a session of the Virginia Assembly convened at the University of Virginia in December 1989. In my commentary I said that "without a doubt, Courts in Transition is the most future-oriented document I have ever seen an official judicial body produce. I do mean it when I say it stands head and shoulders above all other attempts,

and will help other judiciaries do their futures assessments as well or better. I therefore urge this Assembly strongly to endorse the report, with whatever modifications, additions, or deletions you believe may strengthen it. But on the basis of my twenty years of work in futures studies, and in its application to law and the courts, I am convinced that the report does not use information from the future in ways that I believe it should. The report primarily addresses certain problems in the present by utilizing the language of the future. Admittedly this is one of the most common uses of futures discourse: it enables us to criticize or reform the present by pretending to talk about the future. Well and good. I'm in favor of that. But this still leaves the future begging for attention."

The title of my address to the Virginia Assembly, for which I have been frequently and perhaps justifiably criticized, was "Twenty Minutes Into the Future."

I thus fully agree with Prof. Dahlin that most state judicial futures activities are often merely ways of making simple, necessary, but often politically difficult judicial reforms, such as court unification, judicial selection by merit instead of by partisan election, abolishing untrained and locally-elected justices of the peace positions, and the like. Nothing very future-oriented here, however desirable these alterations might be. But often these reforms, cloaked in the language of judicial foresight, are necessary early steps in the overall process of helping courts think farther into the future the next time around--and to keep the wheel forever turning forward.

3. Members of the audience who deserve special thanks for their comments during the panel sessions, and/or in written response to the earlier draft of this article, include Beatrice Monahan and Wendell Bell, and especially David Dahlin.

Although they did not attend the panel sessions, I also received helpful comments on the draft from Clement Bezold, Lester Cingcade, and Daina Farthing-Capowich.

4. Other chief justices include C. C. Torbert, Jr., of Alabama who was also the first Chairman of the State Justice Institute, and Robert Utter of Washington; other judges are especially John Daffron, Jr., of Chesterfield, Virginia who was on the Board of the SJI as well as the Virginia Judiciary futures commission, and Dorothy Beasley of Georgia. Court administrators in other jurisdictions include Carl Bianchi, William Davis, Robert Doss, Jr., Gordon Griller, William Lockhart, Larry Polansky, Larry Sipes, Larry Spears, and The Mother of All Court Administration, Edward McConnell. Certainly, David Tevelin, Executive Director of the State Justice Institute, and Daina Farthing-Capowich, Program Manager of SJI, as well as Frances Zemans, Kathleen Sampson, and Sandra Ratcliff of the American Judicature Society, along with Beatrice Monahan of the National Center for State Courts, deserve great credit for taking the necessary initiative in their areas.

5. Graduate students in the Alternative Futures Option who first interned and often then worked in the futures unit of the Office of Statistics and Planning of the Hawaii State Judiciary were Sohail Inayatullah, Phil McNally, James Monma, Robert Reeves, Richard Rose, Richard Scarce, Sally Taylor, Anne Witebsky, Wayne Yasutomi, and Anna Yue. Former student Ted Hong was an

intern while in Law School, and former student Lauren Walker, along with Addison Bowman, Lester Cingcade, Nathan Kim and Bambi Weil, were on the emerging issues advisory group.

References

1. See the Proceedings of the Citizen's Conference on the Administration of Justice, The Judiciary. State of Hawaii, Honolulu, HI, 1972.
2. See Dator, J. A., and Rodgers, S. J., Alternative Futures for the State Courts of 2020, American Judicature Society, Chicago, IL, 1991.
3. See Pilchen, I., and Ratcliff, S., eds., Conducting Court Futures Activities with Limited Resources, American Judicature Society, Chicago, IL, 1993. See also the extensive bibliography on judicial foresight in Dator and Rodgers, above, and in the Winter 1993 issue of Futures Research Quarterly. This issue of FRQ is devoted entirely to articles about state judicial foresight and the futures of states courts.
4. A representative selection of other recent state judicial foresight reports might include: The Future of the Arizona Courts; Report of the Commission the Courts, Arizona Supreme Court, Phoenix, AZ, 1989; 2020 Vision: Research Papers, Symposium on the Future of California's Courts, Sacramento, CA, December 1992, and the California's Commission on the Future of the Courts, Final Report, Sacramento, CA, Fall 1993; Colorado Courts in the Twenty-First Century: The Final Report from Vision 2020: Colorado Courts Future, Colorado Judicial Department, Denver, CO, March 1992; Williamson, L., and Reaves, R., Justice in the Next Millennium: Report of the Court Futures Vanguard, The Institute of Continuing Judicial Education, University of Georgia School of Law, Athens, GA, 1993; Pilchen, I., The Future and the Courts of Illinois: Conference Summary, American Judicature Society on behalf of the Supreme Court of Illinois, Chicago, IL, 1992; New Dimensions for Justice: Report of the Commission to Study the Future of Maine's Courts, Commission to Study the Future of Maine's Courts, Augusta, ME, February 1993; Reinventing Justice 2022: Report of the Chief Justice's Commission on the Future of the Courts, Massachusetts Supreme Judicial Court, Boston, MA, 1992; Michigan's Courts in the 21st Century: A Report to the Legislature, Governor, and Supreme Court, Michigan Administrative Office of the Courts, Lansing, MI, December 1990; Into the Twenty-First Century: Report and Recommendations, Citizen's Commission on the Texas Judicial System, A Report to the Texas Supreme Court and The Texas Judicial Council, Austin, TX, January 1993; Commission on Justice in the Twenty-First Century, Final Report: Doing Utah Justice, Utah Administrative Office of the Courts, Salt Lake City, UT, December 1991.
5. Lauren Cook, The State Scanning Network, " Futures Research Quarterly, 2(1), 65-77 (1986); Lauren Cook, "State Government Foresight in the US," Futures Research Quarterly, 6(4), 27-40 (1990); Keon Chi, "Foresight Activities in State Government," Futures Research Quarterly, 7(4), 47-60 (1991); and Raymond Shapek, "State Legislative Foresight: Two Models," Futures Research Quarterly, 9(1), 63-80, (1993).

6. Perhaps most popularly contained in Osborne, D., and Gaebler, T., Reinventing Government, Addison-Wesley, Reading, MA, 1992, and feebly appropriated by Vice President Albert Gore.
7. Chaplin, G., and Paige, G., eds., Hawaii 2000: A Continuing Experiment in Anticipatory Democracy, University of Hawaii Press, Honolulu, HI, 1973. See also, Dator, J., Futuristics and the Exercise of Anticipatory Democracy in Hawaii, in A. Somit, ed., Political Science and the Study of the Future, Dryden, Hinsdale IL, 1974, and Dator, J., The Future of Anticipatory Democracy, in C. Bezold, ed., Anticipatory Democracy, Vintage Books, New York, 1978.
8. In addition to the Proceedings cited in Reference 1, above, see also Sugimoto, G., and Yasutomi, W., Comprehensive Planning in the Hawaii Judiciary. The Judiciary. State of Hawaii, Honolulu, HI, 1981; Lester Cingcade, The Future of the Judiciary: One Community's Perspective, in J. Dator and C. Bezold, eds., Judging the Future, Social Science Research Institute, University of Hawaii, Honolulu, HI, 1981; Inayatullah, S., "Futures and the Organization: The Hawaii Judiciary Research Programme," Futures, 16(3), 302-314 (1984); Inayatullah, S., "The Politics of the Dusty Plan," Futures Research Quarterly, 2(4), 63-67 (1986); Inayatullah, S., and Monma, J., "A Decade of Forecasting: Some Perspectives on Futures Research in the Hawaii Judiciary," Futures Research Quarterly, 5(1), 5-20 (1989); Inayatullah, S., "Judicial Foresight in the Hawaii Judiciary," Futures, 23(8), 871-878 (1991); and Inayatullah, S., "Preliminary Report of the 1991 Judicial Foresight Congress," Futures Research Quarterly, 8(3), 76-90 (1992).
9. See, Courts in Transition: The Report of the Commission on the Future of Virginia's Judicial System, Supreme Court of Virginia, Richmond, VA, May 1989; Foresight 2000: A Strategic Plan for the Judicial System of Virginia, Supreme Court of Virginia, Richmond, VA, November 1990; and Future View. A Quarterly Newsletter of Trends and Issues, Supreme Court of Virginia, Richmond, VA. Since 1992.
10. In addition to a large number of internal reports, and the articles and abstracts contained in the quarterly newsletter of the Hawaii Judiciary, Nu Hou Kanawai: Justice Horizons, the following articles were published as a consequence of the work of the futures unit in the Hawaii Judiciary: Inayatullah, S., "Challenges Ahead for State Judiciaries," Futurics, 9(2), 1-9 (1985); Inayatullah, S., "The Future of State Court Administration," Futures Research Quarterly, 2(1), 5-18 (1986); Inayatullah, S., "Issues and Disputes in the Emerging Pacific Era," Futures Research Quarterly, 3(3), 74-79 (1987); McNally, P., and Inayatullah, S., "The Rights of Robots," Futures, 20(2), 119-136 (1988); McNally, P., "The Planner, Planning and Leadership," Futures Research Quarterly, 4(4), 5-14 (1988).
11. Court Futures Manual: A History of Court Futures Research in Colorado. An Administrative Guidebook for Other Jurisdictions, Colorado Judicial Department, Denver, CO, June 1992. See also, Martin, J. A., An Approach to Long Range Strategic Planning for the Courts. Center for Public Policy Studies, Denver, CO, 1992.

12. Schultz, W., Bezold, C., and Monahan, B., Reinventing Courts for the 21st Century: Designing a Vision Process. A Guidebook to Visioning and Futures Thinking Within the Court System, National Center for State Courts, Williamsburg, VA, 1993. Also includes a forty-five minute videotape, "Envisioning Justice: Reinventing Courts for the 21st Century," Produced by Tradewinds Video, Tampa, Florida, July 1993.

13. Pilchen and Ratcliff, Reference 3, above.

14. For useful statements of what futures studies is and is not, see World Futures Studies Federation, ed., Reclaiming the Future: A Manual of Methods, Taylor & Francis, Philadelphia, PA, 1986; Slaughter, R., Futures Concepts and Powerful Ideas, Futures Studies Centre, University of Melbourne, Melbourne, Australia, 1991; and Masini, E., Why Futures Studies? Gray Seal, London, UK, 1993.

The single most useful source of future-oriented material in English is Future Survey, a monthly abstract of books, articles and reports, written by Michael Marien and published by the World Future Society, 7910 Woodmont Avenue, Suite 450, Bethesda, Maryland 20814. Also published by the World Future Society and available by contacting the same address are The Futurist, a popular monthly magazine, and Future Research Quarterly, a quarterly for professional futures researchers.

Futures, published by Butterworth-Heinemann Limited of the Reed Elsevier group in the UK and loosely affiliated with the World Futures Studies Federation, and of course Technological Forecasting and Social Change, also are essential English-language reading for all serious futurists. For more information on the World Futures Studies Federation, contact, Tony Stevenson, Secretary General, Communication Centre, Queensland University of Technology, GPO Box 2434, Brisbane Q. 4001, Australia.