

For the Commission on the Future of Virginia's Judicial System
Richmond, Virginia,
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I.

The main question before the Commission is, I hope, not what will the legal/judicial system of Virginia be like in the early 21st Century, but (1) what should it be like--what are the goals and missions which you believe should characterize the courts in the future--and (2) what should we do now to begin guiding the system towards our preferred future?

I challenge you to take an proactive, creative, inventive, positive attitude towards the future, and towards the judicial system.

I know this is not easy. I know this is fraught with many dangers. I know that the very essence of being a Virginian is to be careful, cautious, conservative, and more proud and certain of what your forefathers did for you in the past than what you can and should do for your descendants in the future.

I am certainly not asking, much less expecting, you to deny your heritage, or, with untoward hubris, to assume that you can do better for their time than did the mighty giants of the past.

But I am asking you to have enough courage (and faith and hope in yourselves) to look honestly and fearlessly at the trends and events impacting upon the present and plunging us into the future, and to ask, for our time and for that of our children, and, perhaps, our great, great grand children: if we were to have to start all over again; if we were to find that we can not (no matter how much we might prefer it), if we simply can not merely transport the present system into the future and hand it, with pride, to our descendants, saying, "here is your court system! I received it, intact, with no modifications, from my father, and he from his, and on back to the beginnings of time; and here it is for you. Honor, preserve, and utilize it well, and pass it on, unaltered to your children for time eternal"--if we find that we simply cannot do that, no matter how much we wish it were otherwise (and, if you do look at past, present, and future trends and events as honestly as I believe you will, such will be your conclusion), then you will see you have no other choice: you MUST be designers and inventors of a new judicial system. You CANNOT assume that what was

good enough for your granddaddy will be (much less be good) at all for your grandchildren. You have the (perhaps unfortunate) obligation to do what the founding fathers did 200 years ago--to roll the universe up into a little tiny ball in your hand, and to unfold it, as a piece of clay, and shape and mold it into a new world.

The only alternative I can see to your creating a new system is for you--and I--to experience the horrendous and painful collapse of the old--and present--one.

I know you don't believe that. I imagine that most of you--judging by your credentials and your obvious success in the present and your replies to Chairman O'Neil--believe that, while there might be a few minor creaks and cracks in the present system, it is absolute bullfeathers for me to waste your time talking about collapse and the need to invent new systems. That is nonsense at best, and irresponsible hype and fright most likely. Exactly the sort of stuff you feared would spew from the mouth of a sunbaked and surfcoated professor from Hawaii. See, I told you: if it isn't known at the UVA, it isn't knowledge.

But please indulge this fool for a few more minutes. Let me make my case--you will have ample time to prove me wrong, and I hope you will--I dare you to. Indeed I pray you are correct (if you feel I am wrong) and that the system--all systems of the great American/Western past--will continue to roll, intact and dominant--into the future.

We--the world and all people in it--stand at the end point of a period of social transformation as important as the turning point within which the Founding Fathers (and mothers--let me be fair and accurate) of the United States lived 200 years ago. The American Revolution was fought and the US Constitution was written in the very closing days of agrarian society; in the pre-industrial era, just as industrial society--which reached its height in the late 19th to mid-20th century--was being born.

The document they wrote, the great American Constitution, though written in the pre-industrial era, was a visionary, forward-looking, prophetic creation which served to guide this nation well towards the future as a great industrial state. It was not perfect. Many extra-constitutional features had to be added to make it work (such as the political party system; the federal bureaucracy and especially the civil service; independent regulatory commissions, welfare and civil rights policies, and, most importantly of all (from a structural point of view), judicial review and subsequent judicial interpretations by the US Supreme Court. Without

these and other modifications (and the few, relatively trivial formal amendments), it is doubtful that the Constitution of 1789 would have survived, to the extent it has, to the present.

Of course it is grossly unfair to forget slavery, the civil war, the struggle--still ongoing--for justice and political equity on the part of the majority (mistakenly called "minorities") of the American people, the horrendous human and environmental tragedies that have accompanied the "march" from a small, rural, decentralized, isolated agricultural society towards becoming a huge, urban, centralized, globally-dominant industrial society (as we used to be), and on towards becoming the world's bully and a military-corporate welfare state, as we most recently have become.

But to focus too much on our failures in the past and present might discourage us from undertaking the task I am here to challenge you for the future. So let's stress, for now, the positive, compelling vision and deeds of our Founding Fathers, and do for our time, what they so nobly did for theirs.

For we at the end of another great turning point in history (it is for this reason that we cannot rely so easily on the past or trends from the present). We have, in my judgement, and in the judgement of others whose studies and evaluations I have come to trust, only a few short years at best to act creatively for the future before the system rips apart, and one, not necessarily to our liking, begins to emerge.

II.

Let me pause here to make a methodological comment about "the future" and the study of the future, before I specify more clearly in substance what I mean.

That which we call, The Future, has three components:

1. There is that which is exactly the same as the past and the present.
2. There is that which is created out of the trends of the past and the present.
3. And there is that which is utterly new.

1. For that which is the same, a good knowledge of history, and careful reflection of one's own personal experience, will suffice. This part

of the future is already known. If we have kept good records and learned our lessons well, we will be able to identify, as they emerge, circumstances which are the same as those in the past. Much of what is called "human nature" might fall into this category. Much of what was known about "mother nature" (the environment; the earth) was at one time in this category of changelessness, where the lessons of the past provided all that one needed to know about the future.

If your public and private school system, from K through PhD, still teaches history courses, but does not offer, systematically, courses on the future (as I fear is probably the case), then you have (somehow, I wonder how) decided that there is nothing new under the sun; that if you know the past you know all that can be known about the future.

2. But there is, and there has been at least for the past 200 years or so, something else. The reason that we have a formal public school system at all, and that we yank children out of their families at a certain age and require them to attend school where themselves properly trained and learned professors turn them from being peasants and farmers into factory workers and managers--this alone should alert you to the fact that we believe the present is discontinuous from the past in important ways; that personal or remembered experience is not enough for survival in the future; that you need to learn the mysteries of science and technology which your parents cannot know; that their knowledge is obsolete, perhaps dangerously so (that is why the popularly elected school boards are always at odds with professional educators, and why our educational system is always out of sync with what "the people" want: the parents want children to be like themselves, but the industrial state wants citizens who can keep economic growth and technological innovation going. And you can't have both at the same time.

Hence, the eventual recognition of the need for scientists and technologists to identify the trends of the present, and to plot them out into the future, revealing, in the words of the late, great futurist, Herman Kahn, the surprise-free, but none the less quite surprising, future which will unfold on the basis of ongoing trends.

Alvin Toffler's old concept of "Future Shock" relates to this second component of the future--most people expect the future to be like the past/present. When it isn't (as it cannot possibly be in a society committed to continuing economic growth and technological change), then people suffer something akin to culture shock or home sickness--they find themselves in a place that has some similarities to what they have

experienced before, but many things that are different. And they want to go home. They want to go back to the way it used to be.

In contemporary terms, they create Disney World, and Heritage Parks, and elect Ronald Reagan president, so desperately do they wish to escape from the reality of the present.

3. That is where the third component of the future comes in--that which is new; never before experienced by humans on earth (as far as we know). Where can new things come from? How is it possible to have something new? If you can't change human nature, what could possibly be new?

The answer is found in something we have already mentioned--technology. Technology creates a more or less new, and more or less profoundly and utterly new, world. The old idea that technology is neutral is completely wrong. New technology always and necessarily destroys old institutions and values. It is absolutely impossible (or at least extremely difficult) to have old values and new technologies. That is the root of future shock: the false expectation that you can have old tried and true beliefs and also have continued economic growth and technological change. You can't.

Here's why. Social values and institutions are ways of regulating, dealing with, human behavioral capabilities. In other words, they relate to things humans can do, and how they think. There are no ethical, moral, religious, or legal rules dealing with things humans cannot do.

That is so obvious it must appear even more stupid than everything else I've said so far. But you have to start with the obvious.

Consider the Ten Commandments. These rules come from a small tribe of wandering shepherds who lived several thousand years ago. They concern themselves with things shepherds could do--in this case, things they should not do. There is not a single commandment prohibiting impossible behavior.

We, in the latter part of the 20th Century, can still do all of the things the commandments tell us not to do. And it makes sense to me that we should still not do them--although we may need to read the fine print to see what is really required/enjoined in specific instances. We obviously don't believe that "Thou Shalt Not Kill" Period No Exceptions, or we wouldn't entice young men and women to Be All You Can Be in The Army where

killing is often quite fashionable. Sometimes thou must not kill. Other times, it seems, thou must.

But there are plenty of things you and I can do about which the Ten Commandments are utterly silent. As Chief Justice Harry Carrico reminded us in his opening remarks, even as recently as one hundred years ago it was not necessary for the state to make laws concerning flying. And certainly it was not necessary to add a commandment to The Ten which said, "Thou Shalt Not Fly." No one was about to do so successfully until about eighty-five years ago.

Now there are many, many things that we can do, and about which we think, which were utterly beyond the ability of humans until recently. The world we live in is increasingly one in which no one before has ever lived, and about which past rules and institutions are more, and more rapidly, irrelevant and arguably quite harmful. We may try to stretch and analogize past rules and modify past institutions, but they were not originally designed to deal with today--much less tomorrow. That presents us with a bigger and bigger problem--and opportunity.

III.

Now, let's go back and relate those three components of the future to societies, past, present, and especially future.

In traditional (tribal; hunting and gathering) societies, and even in agricultural societies, most of the future was exactly like the past. It was rare, and only episodic (of nonetheless frequently catastrophic) for something really new to happen. Thus, the best posture towards the future was to face the past. The best rule was not to improvise or try something new. It was best to do as you were told, to obey your mother and your father, to worship your ancestors, not to be seen, and certainly not to be heard.

The destruction of agricultural society and the creation of industrial societies ended that. Now the future was permanently and purposefully different from the past. You worked so your children could live better than you did, just as your parents worked to make life easier for you.

Mobility was the order of the day. You left Europe and settled in a New World. You left the South and worked in northern cities. You left the farm and worked in the factory. You left the factory and went to school. You

moved. You were mobile--upward and onward--always different, always better, than it was before. In the words of your President, "You ain't seen nothing yet."

But, now industrial society is ending, and if we peer into the future, using our rearview mirror, or even using our analysis of trends, what we see is, in fact--nothing.

There is no "future" out there to be seen, to be adjusted to, to be accepted.

As the futurist William Irwin Thompson has said, "We stand on the edge of history, with the winds of time whistling in our teeth."

And as we face the void, can it be any wonder that most of us just shrug our shoulders and turn back? That we sit down, turn on a lite (Bud lite), and happily watch re-runs of Death Valley Days (a prophetic title indeed, it turns out)?

Or that others of us--most certainly perhaps me foremost among them--project our fears and fantasies and hopes upon that void?

I don't believe humanity has ever been to this point before. And it may never be here again.

It may be, the evidence is becoming increasingly convincing, that humans are one of mother nature's many evolutionary experiments that just aren't working out; that we never should have evolved (or been created with, if you prefer) consciousness, a sense of purpose, the desire to make things better than they already are, the ability to create, and, worse of all, use, technologies--to modify nature. As Walter Truett Anderson has written in one of the most important of recent books, *To Govern Evolution*, humans now must take responsibility for the continuation of all life. This is not a choice, an option. We must or we, and most of life, will die. Humans have so massively interfered with previously-"natural" (that is to say, automatic) processes, that life will not survive unless we recognize what is going on, and take responsibility for its future guidance--we must Govern Evolution.

To say we are not ready for this tremendous challenge, that we need time to gain more knowledge, Anderson points out, is like arguing that teenagers are not ready for adolescence; that it would be better to be 40 years old before the biological and psychological changes of adolescence strike. That is probably true, but it does them, as us, no good. We have

interfered in all natural processes such that none of them operate free of human interference any more. And more and more of these processes are moving in directions which will kill us. It is too late for us to decide not to act. Instead, we must quickly act more wisely and responsibly.

IV.

It is time for me to say something else about "The Future." It is not a singular noun. The futures are plural. It is incorrect to speak, as we usually do, of "The" Future. THE future does not exist as an entity, out there, to be discovered and adjusted to if we only had the proper methods (or consultant!) to display it for us.

The futures are many, and The Future is beyond prediction. It is for this reason that I prefer to speak of "Alternative Futures" instead of "The Future." Moreover, if "The Future" cannot be predicted, then it is at least possible, and necessary, to forecast several Alternative Futures (it is even more important, ultimately, to invent possible and Preferred Futures, and to attempt to achieve one from among them--and to continue re-forecasting new alternatives, and re-designing and re-attempting to achieve newly-Preferred Futures--forever!

We need to recognize that there are at least as many alternative futures as there are people attempting to describe them. I have put together a sampler of four that seem, out of my experience in futures studies, and especially from my attempting to apply futures studies to judicial structures and processes, to be possible and plausible alternative futures.

Please understand that I do not wish you to be constrained by them--only provoked. It is far, far better that you come up with your own set of alternative futures that come from your own experiences and expectations, than that you adhere to mine!

What is important, I believe, is that you do engage in a look at alternative futures, fairly and honestly. It is, I feel certain, both dangerous and irresponsible to try to plan for the future without first assessing its main possibilities. It is even more dangerous and irresponsible (though no less common) to assume that a future which is derived from an extrapolation of whatever are thought to be the dominant current trends is in fact The Future. While you have every right to include among your alternative futures one which is nothing more than the present extended, please do not assume that such is the most likely future until and unless your consideration of several alternatives leaves you with no other choice.

V.

So, let's start with that. Future Number One: Tomorrow is Today. How would you characterize today--especially in light of the recent volatility of the Stock Market? Let's assume that, while individuals and some businesses may have taken it on the chin, nothing all that important has happened to the economic system of the US or to the global economy. A mid-course correction, perhaps. A bit of profit-taking. Over-reliance on computers and dumb rich kids. Not pleasant, but no serious problem. Just a reminder that we can't take things for granted; that we have to keep working and planning; nothing that good old American know-how and will power can't take care of, if we don't lose our confidence and our focus.

OK. So let's assume a future in which the US continues to exercise dominance. We can talk about the emerging Pacific Era if we want, but the US is a Pacific power too--and is very much present with a high profile all over Asia for that matter. So let the 21st Century be a Pacific Era for all we care. The US will still be the Senior Partner there.

And in the US, even though California and the West Coast may continue to grow in importance, the San Andreas fault is about to shake San Francisco and LA into the sea, not Richmond and Washington. Let the West Coast and Sun Belts grow. Power, and prestige, will still be here. And there is nothing wrong with our structure of government at all. If there is a problem, then we can cautiously fix it here and there. The real problem is with upstarts with poor education and inferior backgrounds who, because THEY are incapable of making it in the system, complain that there is something wrong with the system instead of themselves. They are the problem, and they should learn to stop belly-aching and to improve their own capabilities.

As far as the present legal/judicial system is concerned, there, too, we really have nothing too dramatic to worry about. Nobody is forcing all those bright young people into law schools, you know. They enter the legal profession because it is a good, honorable, important, decent-paying career (or at least it is decent-paying for those who deserve to be well-paid for their services. Like any profession, there may be a few deadbeats and incompetents who have managed to slip in. But we have ways to get rid of them as necessary).

A lot of people have complaints about the present. Torts are a major focus

of concern. But don't worry. Our best minds are working on that, and we will have a solution that will satisfy all the major players. But reforms should be approached cautiously. Many people profit enormously from the present system, and no one is all that seriously harmed as a rule. Most lawyers simply could not continue to practice, and make as much money as they do, if there were not considerable case backlog and delay. Delay is healthy and necessary. As is plea-bargaining. God forbid that we would ever have to attempt to settle all legitimate cases in court formally! Then you would see real delay and backlog. The only way the system works is to pretend and to promulgate one system (that of our textbooks and TV shows) and to practice another (the one we all know so well: that of delay, congestion, and plea-bargaining).

It is true that litigation is growing along with the number of lawyers in the US, and that the US has far more lawyers and law suits, proportionately, than any nation. Fine. That proves that most people like both. It is probably therefore necessary for the judicial system to expand even more, and more rapidly--more judges, more lawyers, more clerks, more paralegals.

It probably is a good idea to look at various ways of making the courts more efficient. Certainly the computerization of more parts of the legal/judicial system, along with their eventually being knit together into a true electronic system, will go a long way towards greater efficiency. But beware. I have already pointed out the virtues of the present slippage and delay.

It is probably the case that our law schools need to improve their methods of teaching--to include more practical work, and less traditional analysis of judicial cases--but it is obvious that our law schools aren't all that bad. As I said, students still flock to them, and graduates pass the bar and practice the profession without too many of them being disbarred.

It would be good to have a more rationalized, systematized state judicial administration. The example of the Hawaii courts is a good one--structurally anyway. And we should probably choose and train lawyers to be judges, just as we train people to be lawyers in the first place. Neither should be mere political hacks--but that is the direction the system is moving now anyway. We should just encourage and speed this professionalizing process.

Advertising of judicial services, once feared and long debated, has worked out well. So has the diversification of delivery systems--from the single

professional person, to the large corporate office, to the storefront walk-in counter, to pre-paid legal services. You name it, the legal system will adapt when and if true needs arise.

What about police and prisons? These too are changing in a reasonable and cautious manner. It is good that we have finally seen the wisdom in getting tough with criminals. Let's not lose that just because prisons are crowded and the number of criminals large and still growing. Build more prisons, if that is what it takes! As soon as low-lives learn that we mean business--and that can only come through continued expansion of the number and efficacy of police, lawyers, judges and the courts, and prisons--then crime will finally not pay, and the crime rate will decline.

The police, too, are continuing to modernize. As they continue to be better and differently trained--becoming smarter and more adequately equipped with electronic and other high tech surveillance, monitoring and apprehension devices--what's there to worry about?

Some people complain about the courts being too active. But they have to act! It is clear that the legislative and executive branches (at the state as well as federal levels) simply cannot handle certain kinds of matters as effectively as can the courts. The problem is not judicial activism per se, but judicial activism in defense of certain values and not others. Fortunately, at the federal level, Reagan has seen to it that good conservatives control the district and appellate courts. If he can just make one--preferably two--more appointments to the Supreme Court then the federal system will be safe for the only future I care about: the rest of my life. Then I can die a happy Virginian, knowing the future for my children is in good, safe hands.

Of course, the legal/judicial system will grow! It has too! Population is growing. The complexity and interrelated nature of society is continuing to grow. Professionalization is growing. It is dangerous romantic nonsense to believe that we can in any real way decentralize or de-professionalize these things. We can't turn Justice back over to something romantically called "the community."

In fact, what is this nonsense about "alternative futures?" We all know there is really only one future--continued growth from the present. To even waste time thinking about alternatives is to take precious resources away from the pressing task at hand. We have already sent to President O'Neil our statement as to the major issues facing the judiciary. Let's get to work on them!

Now, if I had an ounce of respect for my betters, I would shut up and sit down at this moment. But it has already been established that I am not smart enough to do that, so I plunge on to a consideration of Future Number Two: Hear Ye, Hear Ye, The Road Warrior Court is Now in Session. The Honorable Mad Max, Presiding.

How can you possibly assume that the recent and present shaking of the Stock Market is anything else but the death rattle of the global economic and industrial system? The system is not falling apart, it has already fallen apart. It is only because we have been so blinded by super-American hype and isolated from what is really happening in the rest of the world over the past eight years that we could believe otherwise.

Of course, saying the system has already fallen apart does not mean it has hit the bottom yet. We are still in free fall, while our heads continue to ring with the roseate orated fantasies of our Great Miscommunicator. Wake up and sell the roses. It is spring time in America!

Well, I am here to tell you that the roses you smell are on your own coffin and the down you are going is into your grave. In the meantime, it is back to the future for the survivors. Back to the time when men are rex, the rex is lex, and the lex is talionis.

I don't really need to spend much time painting a picture of what life is like in such a future. Take a walk down any mean street of any mean American city today--Richmond, for all I know. If that is expecting too much, then drive up in your Volvo or your BMW, step out, and step inside the decaying home of any long-unemployed or futilely under-employed middle-aged family today. Observe the interaction of the behaviors, the despair, frustration, hatred in the voices and eyes.

We have seen it all before. In our own minds. At night. When we are honest about the fragility of our own position or the equivocal character of our wealth.

It is the subject of our sermons and the substance of our prayers--or it was until the electronic evangelists discovered they could get rich by preaching power and greed as virtues, and humility and caring as the weakling's vice.

Knowing this future so well in our hearts and fearing it in our souls does not mean it cannot come to pass. Nor does it mean that it will.

A third future, partly conjured up to ward off our fears, partly extrapolated from the present, might be called a High Tech, Anticipatory Surveillance Society.

Think back for a few minutes. When Ronald Reagan promised, oh so long ago it seems, to get government off our backs and out of our pocketbooks; when the bureaucrats were going to be kicked out of Washington and made to do honest, entrepreneurial work; when the regulatory agencies were deregulated and the magic of the marketplace unleashed--whose heart among us did not flutter with pride and hope?

True, it has not quite worked out that way in every detail: Because of years of neglect, we had to spend a whole lot of money on the military while at the same time cutting back on taxes. As a consequence, the federal bureaucracy has not exactly been reduced. Rather, it was transferred: from toiling in the service of the civilian welfare state into servitude for the military-corporate welfare state. Moreover, the total number of federal bureaucrats greatly grew over the Reagan years so that now most of the federal bureaucrats work, as civilians, for the Department of Defense or for one of the law enforcement agencies, of the Justice or Treasury Departments--like some folks in this room, I suppose. As promised, they are off your backs and out of your pocketbooks, and into your cars and bedrooms, and into your lustful and deviant minds.

But let's get out of the shadows, and put a limelight on this:

We're talking about the privatization of the legal/judicial system too. We are talking about reconstructing all areas of governance, including law and justice, along good business lines. We're talking about the end of the state's monopoly and the beginning of the freedom of choice of judicial systems. We're talking efficiency, responsibility, diversity, courtesy (where appropriate--firmness [not nastiness] elsewhere). We're talking certainty and promptness (of apprehension, of conviction, of punishment, of correction for the guilty, as well as retribution, restitution, and reward for the victims).

We're talking about using modern science and technologies to anticipate and prevent crime. We are talking about being able to identify and correct potential criminals before any crime is committed. That means constructing computer profiles which predict and monitor people likely to commit crimes. That means routinely and automatically monitoring all phone calls and other electronic messages. It also means putting sensors in

roads and cars which can track the location of every vehicle--indeed, every person--in the jurisdiction. It means using our knowledge of how weather causes crime both to prepare for increased anti-social behavior and to control weather so as to decrease crime.

We're talking genetic screening, genetic modification, genetic engineering if needs be to see that violent or deviant crimes simply don't happen any more.

We're talking about brain drugs--manipulating the naturally-occurring drugs in the brain to make violent people gentle, crazy people sane, drunk people sober, depressed people happy, and guilty people penitent and reformed.

And of course we are talking about the re-design of cities so that it discourages crime through intelligent design which makes citizen and professional surveillance easier--indeed, unavoidable. Which utilizes what we know about the relationship between the opportunity for crime and its occurrence: which uses colors, shapes, space, technology so as to design and construct mass transit, buildings, streets, and neighborhoods so that vandalism, graffiti, mugging, rapes, burglaries, and other crimes will be greatly discouraged to begin with, and, if and when they were to occur, simply cannot happen without being observed, and the perpetrator immediately apprehended and arrested, and soon thereafter tried, convicted, sentenced, punished, corrected, and returned, never to deviate again, to the community of decent people.

We're talking about the rapid rise to dominance of private security officers and the rapid demise of public police. And we mean Robocops as well as the old organic kind, with more of both highly visible everywhere: kindly, elderly neighborhood helpful cops; big, mean, menacing, crowd-control cops; nerdy, innocuous white-collar cops--you name it: let the cop-style fit the crime.

And along with that, we're talking about the continued rise of private methods and agencies for dispute resolution--professional and semi-professional mediators, counselors, conflict-resolution specialists along general or highly specialized lines who are so effective that they do not need the presumed (and alienating) Majesty of the Law behind them to obtain the disputants' compliance. All good businesses will take the Alternative Dispute Resolution Pledge. All will subscribe to the Certified Protection Professional Program and the American Society for Industrial Security which presently exist.

But imprisonment too is privatized, taken over by large corporations for profit and by various community helping agencies for compassion's sake and the rapid reintegration of marginal people into the commonweal. Prisons at home--in the garage, attic, or spare bedroom (after the children are gone, a prisoner or two would be no less unruly, and would bring in extra income)--and, of course there will be prisons on floating platforms, on the seabed, and in outer space.

Why the need for all this vigilance and novelty? Because crime will increase, though the state (as it should) will wither away. Organized crime, national and international terrorism, vandalism, and new technocrimes will increase: computer hackers will falsify records, drain your bank account, or just disrupt for the fun of it; crazy biotechnicians will intentionally release uncontrollable new diseases--unless we take care.

As America ages, white collar crime of the aged will increase. We can expect more and more outbreaks of swarming and wilding, as happened even among the normally docile teenagers of Toronto recently.

And as America continues to yellow, brown, and blacken, good old WASP values and crimes (along with the WASPs themselves) will, unless we are vigilant, wither away as well.

Life will be so unsafe that the outmoded justice system based upon individual rights and presumptions of innocence, maybe all right for a slower paced, face-to-face society, will have to go. All will be guilty until proven innocent. No one is above suspicion. Decent people (but who are they for sure?) can't continue to be held ransom by the growing number of crazies with which the present so-called "justice" system is too lax, too slow, too unpredictable. It is an increasingly fearful world. Only the strong can survive. We need a new, efficient, effective, stern and swift judicial system that stops crime before it starts. There is no other way.

Some people think there is, which leads us to our Forth and final Future for today: The Rambo-less Equity Society. This future actually comes in two attractive models. One, in ceramic/metallic silver, is at the high tech, globally-integrated, biotech-driven, post-homosapiens level while the other, of course in natural Green, is for the decentralized, localized, down-to-earth set.

I'll start with the Green version first.

How is it possible for any sane and compassionate person to argue we have a satisfactory, much less a desirable or laudable, justice system anywhere in the US? Our system is, if anything, a disgrace to humanity and ourselves. The US, with the most lawyers and lawsuits in the world, also has the highest crime rate and largest proportion of citizens in prison in the world. And, not content with that, we have vastly upped the percentage over the past eight years by imprisoning more (or attempting to), and reinstating the death penalty. We now outstrip the Soviet Union, South Africa, or virtually any petty dictatorship in our use of the criminal sanction. And still criminals abound and flourish.

We have a lot to learn from other countries--from almost any other country in the world. Consider our two major economic trading partners. Our good and friendly neighbor to the north, Canada, with a standard of living at least equal to ours, has a rate of crime only one fifth that of the United States. And Japan--that country we have only recently learned to hate because it has bettered us in so many ways--has always had few lawyers, little law, even less crime, and almost no recidivism.

Saying this, it is also the case that there is an almost linear relationship between the level of economic development and the rate of crime: low development, low crime; high development, high crime. It is quite clear that economic development causes crime. It just seems that we in the US are better at producing crime than are most other developed countries, and in thus producing a criminal justice system to "combat" it. Make no mistake about it: Crime definitely pays! Our lives depend on it!

How economic development causes crime is no mystery either. Development destroys traditional, smoothly-working ways of life, communities, natural environments, values, and institutions without the slightest concern about cushioning the shocks, or creating appropriate new conditions or values. Sink or swim, we say. Adapt or die.

Unless you are rich and powerful. Great concern is given to the welfare of the rich and famous. So much so that there are clearly two systems of justice in the US today. One for the rich and the other for the poor. That means, of course, one for some of the whites, and one for everyone else. As pointed out before, "everyone else" is growing in numbers. And that means they will certainly grow in discontent, and probably in crime, but maybe also in power and the ability to create a system more equitable, or, following our example, more favorable for themselves.

The words of Milton Eisenhower's old 1969 Violence Commission are as

true now as ever--and getting truer every minute as I speak: "To be a young, poor male; to be undereducated and without means of escape from an oppressive urban environment; to want what the society claims is available [but legitimately only to others]; to see around oneself illegitimate and often violent methods being used to achieve material success; and to observe others using these means with impunity--all this is to be burdened with an enormous set of influences that pull many toward crime and delinquency."

As some one has said, shoplifting, burglary, and mugging are simply the poor person's functional equivalent of a credit card. We steal from the future via plastic, they steal from the present via force.

But their forceful thefts are nothing compared with those of the rich. Far more damage is done from legal drugs than from illegal ones. More people die and are maimed in their cars on our highways than by other people walking down our streets. Developers and freeway builders do more real and lasting damage to the life support systems of earth than any vandal can. Billboards and neon signs that urge us to waste our resources by buying unneeded items are more nearly true ugly graffiti than anything a kid can do with a can of paint. By wholly mortgaging the future beyond redemption, junk bonds have injured all our children far more severely than any drug any street junky could possibly provide. And military contractors! Saints preserve us! Who can match their feats of daring-do? Whether they operate legally or illegally, it really doesn't matter: the magnitude and success of their thefts causes even the most skillful burglar to doff his cap in shame. There is so much to be learned about how to be a successful criminal merely by following the examples of people in high places.

It is frequently said that what is wrong with our prisons is the kind of people who go there. If we had a better class of criminals, our prisons would be in much better shape. The new Federal sentencing guidelines may now provide us the opportunity we've been waiting for!

Professor Wendell Bell, of Yale, some time ago suggested that we could easily do something about the quality of our prisoners by applying the principles of Equal Opportunity and Affirmative Action to all parts of the legal/judicial process. We know very well who is likely to be stopped by a policeman, booked, arraigned, tried, judged guilty, and sentenced to prison or executed. He is black, young, male, undereducated, and unemployed. Is he truly more likely to have broken the law than non-black, older, well-educated, and employed people? Not at all. In fact, to the contrary. While

he may commit more violent crimes (though that is not as clear as you might suppose), he does not commit more crimes per se.

So let's be fair, says Prof. Bell. The judge, in sentencing, should look over the demographic composition of people already in prison, and, since there is not room enough to imprison all persons guilty of a crime, let's see that the prison population fairly represents the public at large. The judge should therefore look down the list of the guilty for a rich old white lady, a yuppie business executive, or (God forbid!) an aging hippie college professor. A better class of prisoner: a better prison environment.

Is that absurd? More absurd than what we do now? I'm not sure it is.

But let's do better than merely be absurd. We know very well what we should do to lower the incidence of all crimes: If people have good jobs (or otherwise are able to be meaningfully contributing members of their society); if life makes sense, has purpose, satisfactions that do not harm or injure others--if everyone can win, at least to some real extent, and no one has to lose for good--then crime is almost nil. We know that's the case. So let's create a new society where equity is truly possible and greed is recognized for what it is.

In typical, well-ordered tribal societies, crime of any kind was (and is) almost nonexistent. While we cannot all return to tribal societies (or can we, if we so choose?), The Greens do envision the creation of a world governed, according to nature, along bio-regional lines, where oceans, rivers, mountains, soils, climates, and human cultures naturally divide, unite, and re-divide again. Where life is on a human scale. Where comprehension replaces complexity, and wisdom supplants knowledge and mere technical know-how. Where you know and trust your neighbors, and they you. Where the Perennial Philosophy reigns and Mother Nature is respected, loved, and worshipped.

The Greens put it this way: the preferred future society they seek to create would embrace ecological wisdom, grassroots democracy, personal and social responsibility, nonviolence, decentralization, community-based economics, postpatriarchal values, respect for diversity, global responsibility, and a future focus. Not all that bad--and possible too, if you will stop to think about it.

In such a society, justice is the natural byproduct of an equitable daily life. There is no "system" of adversarial justice manned by experts, civil or private. A few persons especially adept at mediation might exist, but

everyone will participate in matters of equity, grievance, injury, or fair play. Justice will be part of the air we breath, which itself will be once again breathable.

Now, let me give you the shiny High Tech version of an equitable society. To be honest, I must admit that this is my own preference, so beware!

This version is "high tech" because it takes seriously the assumption that technological change is a major agent of social change; that, in the words of Marshall McLuhan, "we shape our tools, and thereafter our tools shape us;" that social institutions, as well as social values, are strongly conditioned by the technology prevalent in a given society; that as new technologies are developed and widely used, old institutions and values are challenged--and often destroyed.

If this is so, then I believe it is important to look at the values and assumptions imbedded in present social institutions--in this case, the legal/judicial system--and to ask how new technologies might support, challenge, modify, or utterly transform them.

The great American Founding Fathers, whose spirits still vividly animate this city and state, were very much children of a particular time, territory and technology. The dominant worldview of their era was that of Newtonianism, Deism, and Rationalism. Whether optimistic or pessimistic about fundamental human nature, they conceived of the Universe as a great machine whose operation could be understood through human reason. They believed that human institutions should and could be based upon similarly mechanical and rationalistic principles of Nature.

The American Constitution, courts, and laws were all initially created upon these assumptions. Indeed, the courts and laws epitomized these principles more fully than did any other institution (though bureaucracy--"The government of laws and not of men"--came very close subsequently).

The very essence of The Law and of that blind lady with the scales, Ms Justice, was its largely inhuman and mechanical nature. Law and legal procedures were rationalized and made logical and clear in order to eliminate as much as possible that most human of all characteristics--self-centeredness, greed, and emotion. The Law, and judicial proceedings, were to be made fair to all, equitable, and rational. In the expression of Max Weber, the operation of The Law was to be like that of a machine such that if you put in the facts about a dispute at the top, it would automatically generate a judgement, along with logical reasons, at the bottom.

In order for the machine to operate this way, it required not only clear and logical laws, rules, and codes, but also schools of law, where ordinary humans, speaking and thinking like ordinary humans, could be turned into that wonder of the universe--lawyers, who knew how properly to speak to each other, and to the judges, but never as humans. If one were to try to speak as an ordinary human before the court, the consequence would certainly be to misspeak, and hence to lose, or, perhaps even to be imprisoned. Ordinary people must be silent before the Court. Only those learned in the law should presume to express themselves, because they know the secret codes.

Indeed, in modern terms, it might be said that the courts are like a great computer--a great biological computer; that lawyers are computer programmers and operators; and that the software of the biological computer is found in the laws and codes of the State.

If this is so, then there seems to be no modern institution better suited to being almost entirely replaced by electronic computers than are the courts. The courts, like ugly sitting ducks, are ready to be transformed into lovely electronic swans.

The thing that prevents justice from being automatically dispensed in the courts now is human frailty and passion. Since we have tried and failed for so long to make humans think and act like machines, let us take advantage of the emergence of machines that can think and act even more rationally and fairly than humans ever could--computerized artificial intelligence--and do away with the courts entirely. Or, if that is too much, let us restrict human judgement to those rare situations requiring compassion and discrimination, and turn over the many, more typical, wholly routine cases of judicial decision-making to computers. In so doing, we can reduce the entire Virginia judiciary perhaps to no more people than are presently in this room.

Let me illustrate some of the other characteristics of this future with two additional examples of governance.

Majority rule--that system of political decision-making based on the "least-worst" solution to a problem--is actually a relatively modern invention. We can trace it to the very same thinkers--Hobbes, Locke, Rousseau, Montesquieu--who brought us most of the other ideas which became modern institutions of government.

In traditional societies, decisions were and are reached by endless discussion and eventual communal consensus. In pre-modern times, the King's word and law might suffice. But in the relatively more heterogeneous early modern times, neither consensus nor kingly authority was enough. How could diverse groups decide?

Simple. Merely require that all the variations be reduced to two positions, and force choice between them. If more than fifty percent of those choosing adopt one of the two positions, then it will be forced on all--even though the chosen position is probably one that no one prefers! It is typically the "least-worst;" almost never "the best."

Majority rule is wholly obsolete for the present and a future which accepts diversity as normal and preferable. So let's completely abandon the attempt to find single solutions which all people must accept. If, by some odd chance, there are positions that all--every person--in society accepts, then of course we can adopt them. But I suspect there are not any, or that at least they are very few, and that they concern relatively trivial, or overwhelmingly vital, matters. Most issues of social concern, lying between these extremes, will have no consensus about them at all, and, moreover, will have many more preferred positions than merely two.

So how can we make a single, fair rule for all? We cannot. Thus, I suggest we abandon the effort and wholly redirect governance away from forcing conformity to single standards towards supporting individuals and groups in their attempt to realize their own values and in helping buffer and resolve conflicts which will invariably thus occur.

However, the role of the state in conflict resolution will similarly not be played on the basis of its declaring some single "objective" standard of its own choosing, as is presently the pretense. It will be in accordance with the principle of mediation at the present time--an attempt to find solutions which derive from the preferences of the parties to the dispute (and the definition of who the parties are itself should be as broad as necessary, rather than, as at present, as narrow as possible).

We must understand that all people are in fact not equal; but that each person is different, unique. People do not wish to be treated as though they are the same. They want to be treated "their way." The Golden Rule is oppressive. Do not "do unto me" according to they way you wish to be done unto, but as 818 wish to be treated.

Such may have been impossible or even unnecessary in earlier, simpler,

more genetically and experientially homogeneous societies, but it is plainly wrong now. There is no more blunt instrument of oppression of a few over all than the government's use of "majority rule."

There is no "average person." There is no "normal person." There are no "community standards." There are only individuals--of course not largely consumed with themselves in some coarse notion of greedy, "rugged individualism," with each trying to lord it over everyone else: that is an even more obscene and obsolete idea. But each of us, while desiring to have meaning to others, nonetheless desires first and foremost to have our own meaning to ourselves, and also, uniquely, in the very different eyes of every other person.

This uniqueness, this difference, this wholly individual character of each of us will be even more heightened by developments, present and future, in biology and genetic engineering. The diversity of human response and capabilities is now and even more for the future differentiating at exponential speed.

Indeed, we, or at most our children and grandchildren, may be the last generation for whom homosapiens has a monopoly on intelligence and control. Homosapiens is, in fact, in the process, now, of creating its own intelligent successors through electronic artificial intelligence and the many aspects of the biological revolution.

How even more necessary for us, finally, to let go of our old notions of human rationality, discipline, and responsibility, and let those characteristics become the duty of non/post-human intelligences for whom they are better suited. Then humans can be free finally for that which is our forte: the emotional and happy pursuit of prayer, poetry, politics, and peace; and, above all, play.

VI.

I'm sure that's more than enough for now. Your patience must be wearing very thin. Even so, you all know there is so much more to say. You have said some of it in your replies to the Chairman's questionnaire. And there is time today, and in the months to come, for you to say the rest.

I truly wish you well in your endeavor. I really mean it when I say the time is far past when we can rest on the labors of our forefathers alone. That is the recipe for sure disaster. We may not be able to avoid disasters

by our plans and actions here.

But, do you agree? We certainly must try. And if we try, try also to do better?