

Twenty Minutes Into the Future

For the Virginia Assembly on the Future of the Courts
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1. Let me start out by telling you something about why I am so personally interested in what you are doing here.

First of all, my uncle, Geroe Allen, attended the University of Virginia. Because of the fact that there were very few males in my family, and because he, like the rest of them, died during the Second World War, I have only a vague, but nonetheless very powerful, memory of him. So I would like to dedicate my little talk tonight to my uncle Geroe. He would like that, I believe, because, as I understand it, he flunked out.

Also, during the late 1960s, I taught for three years at Virginia Tech, a few light years away from here, over the mountains, yonder. Therefore I appear before you with that combination of awe and inferiority complexes that any Gobbler should feel when he stands in the Rotunda of the Cavaliers. At least when I was at Tech we beat UVa in football and basketball, if not always in academics. But now. . . I won't finish that thought.

And then in addition, for twenty years or so I was married to a woman from Brandy Station, at least as many light years down the road from here. I have many pleasant memories of being with her family on Therkeld Farm. But I have some not so pleasant memories of discussing, with some of the citizens of Culpeper County, the implications of Brown vs. The Board of Education which had just been decided at the time. I remember during one venomous episode a farmer leaning his weathered face towards me, stabbing his boney finger into my chest and informing me, "The trouble with you is, you don't know niggers." Which was both true and false. Even though I had grown up in Florida, with many friends and playmates who in the 1940s were known by white people as "negroes," and even though, in graduate school in the 1950s, I had many colleagues, friends, and mentors who were "of color," it is true that I knew no niggers. I still don't.

But I've known lots of rednecks, and I fancy to believe that their numbers are declining. I mean, if I had prophesied around that kitchen table in Culpeper County that within about 30 years a black person would be duly elected Governor of the great Commonwealth of Virginia, can you imagine the ridicule and derision I would have had to endure? And if I had told them the issues upon which that election apparently turned, those good old boys would have fainted dead away.

But that is the way the future always is. Accurate statements about the future always appear to be absurd, ridiculous, pure science fiction. It is only from the perspective of history that what appears "absurd" in prospect is rendered "inevitable" by hindsight. "Of course a black person would be elected governor. It was only a matter of time," you say now that it has happened. I can assure you it didn't seem so inevitable in 1955, or 65, 75, or even 1985.

Similarly, some of the forecasts which the Commission on the Future of Virginia's Judicial System had presented to it, but which it apparently ignored for whatever reason, may turn out to appear as equally "inevitable" when they do occur as they now may seem to be "absurd" since they have not yet occurred. And Virginia and her courts may consequently be unprepared to deal with or profit from the trends and events contained in those neglected forecasts. But that's the nice thing about the future, compared to the present and the past: we'll see.

All this reminds me of that episode in the film, "Back to the Future" (Part I), where the black teenage janitor of the local white teenage hangout in the early 1950s announces that he is going to be the mayor of the city when he grows up. Everybody laughs uproariously at the absurdity and pretension of the thought.

This scene is then topped by one in which the hero of the film, a young person from the mid 1980s who is mistakenly sent back in time to the 1950s, spies a marquee on the local motion picture theater which contains the name of the male lead in the B movie currently showing. When our hero announces that that person will become President of the United States, his companions crack up completely. They find it far easier to imagine that a black person will become mayor of their city than that Ronald Reagan will become President of the United States—twice.

Me too. I still can't believe it.

Anyway, the final reason I am so personally interested in what you are doing here is because of work that I have been doing for a number of years with Robert Baldwin, chief administrator of Virginia's judiciary, and with Kathy Mays, Virginia's—indeed, the world's—foremost judicial futurist. Then I met Chief Justice Harry Carrico and heard him deliver an outstanding and impressively future-oriented charge to the Commission. And then I knew everything would be totally under control and on track when the President of the University of Virginia (I genuflect), Robert O'Neil, was chosen the Commission's chair, and when the most appropriately future-oriented judge in the nation, John Daffron, was appointed to the Commission, along with so many other outstanding Virginians.

So with all of that as a lengthy introduction to why I am so personally interested in what you are doing here tonight, let me make a few comments from my perspective on the substance and the process that brought you here.

2. As a person long concerned with the futures of the various American judicial systems, I am very pleased with what the Virginia Commission on the Courts has done—the process the Commission undertook and the report it issued. It is good that this was a citizen-based activity rather than a staff or consultant's report, yet fully sponsored and engaged in by all levels of the State's judiciary. It is good that the deliberations were spread over many months instead of being rushed in a few weeks. It is good that additional citizen input was sought through public hearings and other means. And it is especially good that the prestigious and influential Virginia Assembly has seen fit to focus on that report and process as you are now doing.

I have had the pleasure of working over the years with many state judiciaries and judiciary-linking organizations, and I can tell you quite honestly that Virginia's present judiciary has already demonstrated to the judiciaries of other US states that it is the leader without equal in judicial foresight and in the use of that foresight for the consideration and undertaking of necessary changes in the

structure and practices of the judiciary presently. Your deliberations and actions during this Assembly should only increase the image and reality of that leadership.

I know that other states are already looking at what Virginia has done, and many are now trying to do the same—or better. Since Rob Baldwin is also presently the head of the National Council of State Court Administrators he is in an unusually good position to exercise this opportunity for leadership, and I can assure you he is exercising it! Again, the actions undertaken here by the Virginia Assembly can only strengthen his opportunity as well.

Let me more specifically mention some of the things about the Commission's report, "Courts in Transition," that I find especially commendable:

First of all, it exists, and it exists in a handsome, readable form. It is clear and largely "actionable."

Secondly, I believe that the information and trends in the section on "Facing the Future" are very reliable so that evaluating their general social impacts and determining their likely implications for the futures of the court seems to me to be an urgently worthy undertaking.

Third, the Ten Visions also are compelling. Even though I believe they relate too much to the present mission of the state judiciary, I suppose a good case could be made that these will also be major concerns of the judiciary in the future as well. I am less certain that there will be no other issues equally or more important for the future than these ten are for the present.

Turning to the specific recommendations in the Report, I applaud the concern with equitable, convenient access and legal aid. I especially appreciate the recommendations of Vision Three on ADR, particularly 3.3: I do hope that the pilot project with a "multi—door courthouse" is already underway, or will be shortly, and that it will provide results which can be used throughout the Virginia judiciary. I am pleased that electronic technology was also considered and that judicial/administrative education and especially continuing education and training, as well as increasing, in a non-propagandizing way, the understanding of the general public in judicial philosophies and procedures, was stressed. And I am obviously wildly enthusiastic about Vision Nine. To me, the creation of an ongoing future-scanning and implementing process and structure for the judiciary is the most important recommendation of them all.

This is a document of which you can all be very, very proud and supportive.

3. However, you may have noticed that I titled my little talk, "20 minutes into the future." I did so not only because I expect to spend twenty or so minutes talking with you about the future, and not only because "20 minutes into the future" is similar to the statement that began every episode of the uncommonly good, and hence therefore cancelled, TV program of a few seasons ago, "Max Headroom."

No, I titled my talk "20 minutes into the future" because that is what I said about the Commission's report when I first read it. It seemed to me that it carried the courts of Virginia about twenty minutes into the future. Actually my first reaction was five minutes into the future, but, as you can tell from what I said before, I decided on reflection that certain aspects of the report were more futuristic than

that.

But in my judgement, “Courts in Transition” is not a sufficient guide to the future for the courts of Virginia. It is a great start, if only because it (hopefully!) legitimates the process of anticipating the future so that assessments of the future more useful to the judiciary can now be undertaken on a regular, routine, and more far—ranging basis.

But I certainly hope that no one here thinks that you can enact the fine proposals contained in the report and then be finished with the consideration of the future—certainly not forever, but not even for, say, five or ten years. To the contrary, the report should be merely the start of many more intensive, extensive, and continuously ongoing surveys of and actions towards the future.

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.

Of course, it may not be possible for us to do more or to do better. Since all of the Commission men and women are good, honorable and true; since the Chief Justice, and the Commission Chairman, and certainly the staff sincerely did their best and, truly desired to address the future—and since these were all Virginians, for god’s sake (they weren’t just ordinary mortals, you understand)—how could I possibly expect other mere humans to do better? I must be expecting too much. Indeed, serious futures research and its application to decisionmaking may be beyond the ability of any humans, there being so little evidence of its ever having been undertaken at all.

Humans, individually but especially collectively, seem supremely able to act so as to influence the future tremendously. But we seem utterly unable to take responsibility for the consequences of our actions. In addition, we seem largely incapable of attempting to assess, fairly and comprehensively, the consequences of our actions before we act.

Thus humanity and the world are in a serious predicament: we don’t assess the consequences of our actions; we don’t take responsibility for those consequences; and yet we have increasing powers, which we increasingly use, profoundly to impact the future!

A pretty sad situation! Indeed, a pretty dangerous situation, it seems to me.

4. Let me be more specific. I believe the report seriously underestimates (when it does not simply ignore) the consequences on society and the judiciary within it of five basic forces shaping the future of Virginia, the nation, and much of the world.

The five are: certain demographic changes; economic deformations and transformations, looming environmental challenges—not to say catastrophes—powerful new technologies, and profoundly wrenching political movements and developments.

Let me explain each briefly.

[Expand]

While some of you may feel that some of these things sound more or less reasonable, I suspect most of you feel they are utter nonsense—sheer science fiction or wild speculation—nothing that any good, conservative Virginian need concern herself with.

Furthermore, because there are more than enough problems for us to deal with in the present—those outlined in the Commission’s report, for example—there is no need for us to worry about things that might or might not occur in the future. Moreover, since our present judicial system works pretty well, and can be made better only by lawyers and judges and a few trusted outsiders tinkering slowly and carefully with what we have rather than by junking it recklessly for other, untried, alternative methods of resolving disputes, there really is no reason to give extended attention to these alternative futures or alternative judiciaries.

I know that many of you—most of you—feel this way. That is why the Commission’s report turned out the way it did. That is the response that I have seen most people—no, let me correct that—that is the response that I have seen most Americans give over the past several decades.

We seem to have lost our ability or our will to lead, to envision, to be socially creative and responsible to the future.

Humor me for a few more minutes, if you can.

Even though you probably feel otherwise, assume for a while that I am correct in that what I feel needs to be done in assessing the futures should be done, and that the Commission’s report did not do it.

If so, why did it fail in this regard (however much it might have succeeded in others)?

Well, it could be a generalized human failing. Humans slowly evolved in and for societies which themselves changed very little, if at all. The past was always the best guide to the present and future for perhaps hundreds of thousands of years. So maybe it is in our very genes to ignore the future.

There is good evidence to support this, as I’ve already hinted. We seem incapable of taking responsibility for the future, and we seem incapable of not acting so as to influence it—maybe to destroy it is more accurate.

In which case our situation is tragic in the strictest sense: we cannot avoid acting in ways that will lead to our own, and much of the rest of the world's, sad demise. Human beings are one of nature's many experiments which, like many before and many more after, simply is not working out. It's time for us to go because of our inability to be responsibly foresightful.

But on the other hand, there were times when even Americans were future-oriented in ways we are not now. How can anyone possibly stand in this building and not feel the power of—and hopefully be inspired and influenced by—one of the greatest visionaries and social architects of all time? Once upon a time, Americans had a dream. Latterly, we have become mere caretakers, and most recently, rapists, of that dream: not only have we basically ignored the future over the past years of unbridled public and private greed (what another observer less politely called “gang—raping by economic thugs loosed by Reaganomics” [Richard Reeves, November 29, 1989, Honolulu Advertiser]), but we have massively and brazenly stolen from our children's future so that we could have a few bright moments of standing tall through the sun decks of our plush-bucketed BMWs.

The frequent assertion or belief that the US won the Cold War is, to me, a clear example of our future—blindness. Both the USSR and the US lost the Cold War. If any nation won that war, it probably was Japan, but even that victory, too, will soon be revealed as illusory. The economic collapse initially of the Third World and then the Second only presages the collapse of the First, I believe.

So maybe one reason the Commission did not look very far or wide into the future is that once you begin to do so you see how very bleak it is, at least for us. Being citizens of a nation which spent the 70s ignoring the future which the oil crises, the ending of the Vietnam War, and Watergate rendered so unpleasant; and then having spent the 80s pretending the future resembled reruns of the commercials surrounding “Death Valley Days,” it is certainly no wonder that the Commission found it to be the better part of valor collectively to stand on the Edge of History with their backs to the wind.

But I can tell you, on the basis of my travels around the world to talk about the future with people in Japan, China, Hungary, Estonia, Bulgaria, Australia, Malaysia, Chile, Costa Rica, Morocco, Saudi Arabia, Kenya, even India, Pakistan, and Bangladesh—wherever—that there are many others in the world who are dreaming and working for a different world.

I have met very few people in Eastern Europe or the Soviet Union who denounce socialism and who wish to adopt our system in its whole—especially our judicial system, you may be sure! Rather, I have met thousands of people who, while recognizing and deploring the terrible cruelties which have occurred within their nations, and which their nations have inflicted on others, still are basically proud of their past and the many accomplishments of socialism. They are able to do what few Americans can do, and that is to see the limits in the future of the ways and processes of the past. Neither communism nor capitalism as recently or currently practiced, is capable of addressing the future. Indeed, both are primarily responsible for the “Chasm Ahead.” Yet while understanding that the only place where one can stand in order to see and build a different future is on the ground of one's own heritage, they are able, many of them, to see and to want to begin working for a substantially new and better world. Few of us Americans can—or do.

So I think there is a third alternative—or more likely, cumulative—reason why the Commission did not look very far into the future, and that has to do with our educational system. Our schools and colleges still act as though everything that we need to know about and for the future has already been experienced: that if we know the past—know history—then we know everything that can be known, or needs to be known, about the future.

I certainly am not arguing against the study of history. If I have any argument with what most Americans call “history” it is that it is too ethnocentric and shortsighted in its vision of the past. We neglect the opportunity of learning from many histories not our own, and from even our own rich, hidden histories, as well as from those who lived before anyone’s “history” was recorded in print.

But I, along with a handful of other people in the US, have been teaching undergraduate and graduate courses dealing with the future for more than twenty years. Indeed, my graduate program in Alternative Futures in the Department of Political Science at the University of Hawaii regularly pours practicing futurists out into society to earn a very good living plying their futures trade. Indeed, what some people say was the very first regularly—scheduled university sequence of courses on the future was taught at Virginia Tech in 1967, 68 and 69. Nonetheless, very, very few students in the US are exposed to the serious study of the future in comparison to the millions who are forced to study the past and the thousands who study the present through various forms of empirical, scientific analysis.

And so most of us are simply utterly inexperienced in thinking about the future. Asking a group of prosperous, successful, well-educated Virginians to think about the future is about as effective as asking them to levitate: as enterprising Virginians they might conscientiously contemplate the possibility, but as well-educated Virginians they will know better than to try.

In my opinion, that is the crux of the matter. Our educational systems, grand as they are by many measures, fail to orient themselves effectively towards the future. Once they did. This very campus was envisioned and built by a person—by many people—who realized the severe limitations of the ancient wisdom and institutions of the time for engendering the knowledge, attitudes, and wills needed to create the New Virginia and the New United States of the 19th and 20th Centuries. So they created new educational and political institutions which in turn produced the knowledge and the citizens of what was once, but is not now, the “novus ordo seclorum” to quote from the backside of a source we all worship and kiss: that of the Almighty Dollar.

Well, we are now all aborigines in a new world. No one has ever been where we are now. No one can be certain where we are going, except to be sure that we have never been there before. The guides and signposts which got us successfully here are of limited value in getting us any farther.

I challenge people here from the University of Virginia, and those who come from the other outstanding universities and institutions of learning at all levels, to re-focus education in this State so that your graduates are better able to think more appropriately and act more responsibly towards the future. You might make this a mission for your Colleges of Continuing Education as well.

And then, after you’ve done that, you might want to reformulate a Commission to look into the Future of Virginia’s Judicial System. And you might as well try to

redesign the rest of the State's political system while you're at it: it certainly needs re-invention at least as much as does the Judiciary! But while you're at that, why not also envision and design a new government for the United States? Virginians did that before. If anyone could get away with it again, it should be you!

Wouldn't it be great to live in a nation with truly modern, democratic forms and processes of governance? Wouldn't it be even greater to live in such a world? So don't stop with the Virginia judiciary: let's weave an entire web of true democratic governance from the individual to the globe. Why don't you help that dream come true?

Well, I know why you won't, and that you won't, and that is why I am increasingly pessimistic about the future of this State, this Nation, and, indeed, this species of homo that presumptuously calls itself "sapiens."

So thank you for permitting me to spend somewhat more than twenty minutes with you in the future. I apologize for not saying very much about what I envision as a preferable new judicial system. But for that, we'd need another twenty minutes, at least, in some other future alternative to the one that lies immediately ahead of you tonight.

I mean, what kind of a conference organizer is it that convenes you in the sacred Rotunda after two hard days and nights of work, wines and dines you grandly, and then makes you gag by trying to force an emetic of a raving futurist down your throats, and then expects you to work for several more hours on the draft of the Assembly's Final Statement? It's enough to give you an adverse reaction to the word, "future," for the rest of your lives.

Thank you very, very much for giving me this opportunity to speak with you. I eagerly await your results as you try to push, with one hand, the judiciary of Virginia perhaps twenty more minutes into the future, and, with the other, me out the door into the cruel, cold, howling Virginia night.