

**SUPREME COURT
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ENVIRONMENTAL SCAN
1995**

**CRIME AND JUSTICE
Special Supplement**

HAWAII RESEARCH CENTER FOR FUTURES STUDIES

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INTRODUCTION

Although admittedly "here and now," issues of crime and justice in the courts today will have long-term consequences for the future of society. The perception of a sweeping plague of crime and increasing economic struggles, global in scope, combined with the new political agenda of the Republican congress, give rise to the need for a close look at crime and justice in America. As Dator has said, "An adaptive and visionary court system could offer much-needed leadership for the next millennium." Today in the midst of turbulent social, political and economic change, we are well-served by a judicial system which some time ago "turned to the study of the future to better deal with current crises and to reinvent themselves."

We offer a look at crime and the justice system from a number of perspectives. All elaborations here are within the context of discussions presented in the emerging issues analysis of the larger environmental scan as a whole. This is just a taste of what's swirling around out there. We have included information on crime and justice here in Hawai'i: it's what we're most familiar with and it demonstrates the blend of unique and common factors affecting crime and justice everywhere. A new research project on Hawai'i's Integrated Drug Policy is underway at the Social Science Research Institute at UH Manoa. Also, HRCFS has a 'Web-Site' on the Internet and is exploring it's potential. A project of the UH Center for Development Studies plans to establish an integrated data-base of all Social Science research at the University, and also have it available at a Web-Site on the Internet. In fact, tapping into other cities, counties and states was highly recommended in the research. We advise establishing an electronic exchange of what's working, what's not, brainstorming ideas, creating a data-base for a variety of justice concerns, and tracking projects. Catch the wave -- surf the Net. It will be good preparation for the coming Tsunamis.

CITATION: Dator, in "Reinventing the Courts and Justice", p 43, in "Reinventing the World", Cynthia G. Wagner, The Futurist, November-December 1993: 42-48.

EMERGING ISSUES ANALYSIS: CRIME AND JUSTICE

DISCUSSION -- A CONTRACT ON LITIGATION AND CRIME: Two endorsements of the Republican Contract with America affect the Courts directly: the "Common Sense Legal Reform Act," in which "loser pays" laws, reasonable limits on punitive damages and reform of product liability laws attempt to stem the endless tide of litigation; and the "Taking Back our Streets Act," an anti-crime package including stronger truth-in-sentencing, "good faith" exclusionary rule exemptions, effective death penalty provisions, and cuts in social spending from this summer's "crime" bill to instead fund prison construction and additional law enforcement to keep people secure in their neighborhoods and kids safe in their schools."

TREND -- Common Sense Legal Reform: We include a two part look at litigation and the courts in Hawai'i and nationwide. The numbers may fuel the notion of a litigation explosion, however, the types of lawsuits also raise the question of whether we're turning too quickly to the courts to resolve differences or recover money. A cross-section of members of the legal community in Hawai'i were interviewed and offered a variety of opinions. Even some involved in the legal community believe the number of lawyers is the problem, however to others it's a symptom of the problem. The reason most cited for the increase in litigation is that innovative theories of law have evolved new theories about what you can sue. The greatest impact, however, has probably come from the development of the law since the 1960s, holding manufacturers strictly responsible for defects in their products.

Numerous people in the legal community say the increase in litigation is a reflection of the changing times and for Hawai'i in particular, our changing values. In Hawai'i, time has overcome ethnic forms of dispute resolution, as with Hawaiian "Ho'oponopono" (a nonviolent process of dealing with problems and conflicts as they arise), and others in Hawai'i's immigrant cultures. In the transition from "small town" communities to mobility and urban centers the person suing was less likely to be a neighbor, and more likely to be a stranger. Insurance is seen as another major cause of the impersonality of lawsuits. Indeed, without insurance, most tort theories would shrivel up and die. It is also pointed out that the increases in lawsuits shouldn't necessarily be compared with population. Lawsuits involving motor vehicles increased faster than the population, but not with the number of cars. A more educated public is filing more small claims on their own and going to attorneys when there is someone to blame in an accident or someone is injured.

IMPLICATIONS: The increase in litigation has meant an increase in the form of taxes needed to fund an ever busier judiciary. Another downside of the increase in litigation is that the insurance industry is headed for a crisis, especially in automobile insurance and

companies engaging in recreational activities. The legal reforms called for in the Contract appear to be in line with many states efforts. State lawmakers in Hawai'i and other states have been asked each year to reform the laws governing lawsuits, especially tort suits seeking recovery for personal injuries. The proposals seek to place caps on recovery or limit liability. During last year's legislative session, Hawai'i lawmakers passed a measure that eliminates state, city and county governments as a "deep pocket." The new law limits the payment by governmental entities to their percentage of fault. These should cut back on suits against government, especially the ones in which the city, state or county may be only marginally liable.

TIME HORIZON: Short-term.

CITATION: A two-part story, "Suits Grow under New Legal Views," January 1 1995: A1 and A6; and "Litigation Explosion: Is it a Myth?" Ken Kobayashi, *The Honolulu Advertiser*, January 2, 1995: A1-A2.

TREND -- Taking Back Our Streets: Last summers crime bill is on the 'hit list' of the GOP. With Democrats fearing to appear soft on crime, House Republicans have in only four days of debate succeeded in passing five of the seven anti-crime bills they had pledged to redraft in their "Contract With America". The measures would: • expand the offenses for which illegal aliens can be swiftly deported. The vote was 380-20; • approve \$2.6 billion in additional funds for prison construction, with the proviso that it go only to states that make violent felons serve at least 85 percent of their time; • expand exceptions under which improperly obtained evidence may be used in trials; • require convicted felons to pay restitution to their victims in federal cases; • limit to one year the time that death row inmates have to file appeals of their state-ordered death sentences in federal court.

At this writing the House has most likely passed the sixth of the anti-crime measures, eliminating three grant programs approved last year: \$8.8 billion for localities to hire police officers; \$4 billion for social programs to prevent crime; and \$1 billion for drug courts. In their place would be a \$10 billion block-grant program that gives states more leeway in how the money would be used. President Clinton is threatening to veto legislation undermining his commitment to put 100,000 new police on the street. White House officials say they believe they can make a veto stick, depending on what the Senate does. All the measures await Senate action, and significant changes appear likely there.

The seventh bill in the GOP's crime package will not be brought up until May. It would repeal the 1994 law's ban on military-style assault weapons and would make it a federal offense to use a gun during commission of state as well as federal crimes.

IMPLICATIONS: The Republican congress looks at the President's crime bill as social welfare. In addition to the elimination of drug courts, federal funding for other programs will not be forthcoming. Senator Patrick Leahy, D-Vermont, believes the Contract will in effect, cut local partnership, education, drug treatment, jobs, safe havens, and crime prevention programs. In the House, the Republicans may use the Judiciary Committee's oversight role to question lawyers, prosecutors and senior officials on the Administration's enforcement of civil rights, environmental and anti-trust laws. It is possible that Republican control of the Senate under Orrin Hatch of Utah will lead to inevitable battles over President Clinton's judicial nominations, especially over appointments to the appellate bench and Supreme Court, if another Justice retires.

The first 100 days will be over soon enough with most of the measures from the Contract With America passing into law. The US will definitely be trying something different, and states will be grappling with complexity at a whole new level. "Fasten your seatbelts, it's going to be a bumpy ride." Refer to interpretations in the main environmental scan.

TIME HORIZON: Immediate to long-term as fallout appears in a sort of time-release mode.

CITATION: "New Majority's Agenda; on "Crime," David Johnston, in "The 1994 Election: Looking Ahead," *Special to the New York Times*, November 11 1994: A26, also various other news sources.

DISCUSSION -- JUVENILE JUSTICE: A judge interviewed on CNN recently regarding justice, the courts, and the Republican's Contract with America commented on the basic endorsements, mainly pointing out that the poor will tend to suffer. The judge's attention was on the Juvenile Justice system, which she sees as "archaic, and ineffective, designed for a different world -- We can't just wait, we need serious discussion". She notes the "differences in the "typical kid" who comes before her today as compared to five years ago. Then, at age 15, there was remorse, they were sucked in -- now, at age 15, they're paid assassins. How can the child before you be so different in five years, it's not the child -- it's society. We can write them off, or take responsibility."

Her approach to responsibility is a Truancy Project. Truancy is the number one predictor of criminal behavior in the young, often leading to drug dealing and violence. The project matches 200 lawyer mentors with truant children who have no priors. The purpose is to provide a safety net, get them back on track, back in school, and get them to succeed. This approach is flat out against the treatment of young offenders as adults. The

system has not succeeded with adults: to throw the juveniles in with adult hardened criminals is like sending them to school for criminal behavior.

IMPLICATIONS: In addition to the effects of GOP "taking back our streets" measures, the judge believes the Contract's welfare reform legislation would leave 5 million at risk children out of the picture. This section focuses on children and the courts, and the implications are staggering. The image of the future for many of today's youth is non-existent, life is seen as a fleeting moment in time and space in which you burn brightly and are then extinguished. Or, reality itself is a vision out of a nightmare, whether its at home, on the streets, or behind bars. Most scenarios involve violence, and a good deal of crime and drugs too. Not nearly enough resonate with joyous, energetic expectations of a future stretching out ahead, open to visions of creative invention, so vast there is no conception of limits. From the future looking back, our lack of courage and vision regarding our youth, their potential, and all our futures will be seen as the pivotal mistake of humanity in our time.

TIME HORIZON: Now.

CITATION: This material is from a televised CNN interview, to which I have lost my notes. My apologies.

TREND -- Truancy Project for Parents: In Hawai'i a House Education Committee bill targets the parents of kids who are truant. Parents could face up to a \$1,000 fine and be sentenced to 30 days in jail. However, facing a petition in Family Court is a last resort. Schools try changing class schedules, tracking attendance every day in every class, requiring parents to call the school daily, or placing the student in alternative education programs such as the Job Corps.

In addition, at eleven Oahu schools a truant child's first arrest can put the youngster and the parents in the Honolulu Police Department's Saturday Afternoon Program. The program, known as SAP, lets the child make up the absence, and includes counseling on the truancy law and ways to improve attendance. Police Capt. Mike Hama said attendance is up and vandalism down at the eleven schools. In support of the bills, he believes more is needed

Michael Town, Family Court senior judge, said creating "student courts" — in which misbehaved kids would be disciplined by a panel of their peers -- and administrative

hearings would provide other alternatives to Family Court. Town also supported a controversial section of the truancy bill that lowers the age of mandatory school attendance from 18 to 16. Stating that the decision was the Legislature's, he said that after prison and

mental hospitals, schools are our society's most coercive institutions. If older students prefer not to be in school, they shouldn't be forced to stay. Others disagreed with lowering the age of mandatory attendance, saying it would put unsupervised minors in the community without programs. "Rather than helping the truancy problem, lowering the compulsory age would compound it."

IMPLICATIONS: The courts could actually pave the way for a trend toward nonviolent crime prevention by supporting programs to keep children in school. However, they can also explore more alternatives: keeping more students out of school by reinventing education; expanding distance learning with telecommunication technology; instituting life-long learning; and through the use of innovative ideas like the "bit tax", making education excellent and available to all.

TIME HORIZON: Short to long-term.

CITATION: *The Honolulu Advertiser*, February 5 1995: A7.

TREND -- Violent Youth, Armed and Loaded: "Cities are furiously tapping each other for ideas...magic bullets to deter the terror of the '90's: violent youth, armed and loaded" -- "In St. Louis police are knocking on selected doors and making a polite but pointed pitch to startled parents: We think your kid has a gun. Fill out this form and we'll come in and get it." Nobody gets arrested, nobody goes to jail. Just waive your right to a search warrant and let the cops poke around the closet and peak under a mattress. Keep your kid, fork over the firearm."

The consent-to-search form used in high-crime areas of St. Louis is popular but unproved, and it's being copied by other cities, regardless. It is just one tool in one town in a country where the climate of fear has turned virtually every community into a glorified crime lab, a "felony think tank".

Like never before, US cities are furiously tapping each other for ideas and competing against each other for grants in a great race to develop new models for crime fighting, magic bullets to deter the terror of the '90s: violent youth, armed and loaded.

In Kansas City and Indianapolis, police use virtual drive-by enforcement, sending special teams into high-crime areas with a free-ranging mandate to stop cars, search bodies, find guns.

In Denver, authorities are visiting licensed gun dealers they think -- but can't prove -- are selling guns to gangsters, and urging them to get out of the business. Many have.

In San Diego, a special task force hoping to design a nationwide crime-fighting model also is incorporating some aspects of the St. Louis program. It's printing leaflets telling parents of Indo-Chinese gang members where kids like to hide their guns.

In St. Louis police appear to operate with impunity because the high-crime neighborhoods they target have demanded it during long meetings with residents too scared to go outside when the street light comes on.

University of Maryland Criminologist, Lawrence Sherman, designed the system in which special police patrols were dispatched to find guns. He is now building the same system for the entire city of Indianapolis. Last month, Washington DC said it would copy the system, and roughly 30 other cities are interested.

The key, Sherman said, "is building enough bridges to the community -- meetings with neighborhoods, visiting schools -- to make the tough tactics sprout from grass-roots concerns. We're moving toward a new era of politically sensitive, aggressive policing," Sherman said, "The officers have to sell what they're doing."

But as police departments push the civil liberties envelope, criticism is intensifying. Last Year, a federal judge ruled the Chicago Housing Authority violated the Constitution by searching an apartment in a Chicago housing project without getting warrants.

Experts say cities are plunging into new programs without a set of instructions, or any evidence that the finished product will work. Many of these new programs involve aggressive police techniques that not long ago would have been dismissed as pure harassment, racial and otherwise.

"We are in the midst of an enormous storm of activity in the general area of violence reduction," said Richard Rosenfeld, a criminology and criminal justice professor at the University of Missouri-St. Louis.

IMPLICATIONS: Caution is required. Officers 'selling' politically sensitive, aggressive policing policy to communities is questionable to say the least. "Giving responsibility for crime control to the police is dangerous to our liberties. When Western democratic countries are gripped by crime "crises", their habitual response is to strengthen legal controls. They enact stricter laws, reducing procedural protections for individuals accused of crimes, and make punishments harsher. In searching for remedies for crime, intensified law enforcement is the default position of liberal democratic countries. It is the only solution they know." It's time for research, technology, and dialogue to add new variables to the crime equation.

TIME HORIZON: Immediate to short-term.

CITATION: "Crime Fight Pushes Limits of Civil Rights," Mark Friz, Associated Press, *The Honolulu Advertiser*, February 5 1995: A20.

TREND -- Hawai'i's Big Island Erupts: A "Once-kindred society, plagued with violence of every kind...Crime, jobless rates erupting at the same time." Hilo, Hawai'i --

"Murders, large-scale assaults, robberies, shootings and stabbings have filled police logs since last fall. The violence appears random and senseless. Only one clear, disturbing pattern has emerged: the majority of the acts were carried out by teenagers or young men in their early 20's.

The Big Island is changing. And it's here that the state's problems are colliding: • unemployment, already the highest in the state at the beginning of 1994, has risen by more than 50 per cent since then, in part because of the death of the sugar industry; • private and social services are declining at a time when needs are increasing; • the Big Island has twice the child abuse rate of Oahu. It also has the state's highest rate of non marital births -- 868 in 1992, of which 695 were delivered by mothers under 18. Sociologists say child abuse helps develop criminals; • compared to Oahu, the Big Island has four times the domestic violence rate; and • there are more attempted suicides and suicides -- particularly among teens -- here than anywhere in the state. Judge Ben Gads, Hilo's Family Court judge for six years believes children learn violence from their parents. In 1994 he issued 499 domestic restraining orders for East Hawai'i alone. Others believe many of the law-breakers have no expectations in life, and don't see the need for them.

IMPLICATIONS: The violence, drugs and crime problems on the Big Island offer a peek at what may be waiting for other communities with increasing need in times of decreasing social services. Unemployment appears directly related to violent crime, now what was that "bit tax" again -- helping people live useful and peaceful lives -- provide useful, quality education for all people, all ages; give anyone a job who wants one; drug treatment to anyone who needs it?

TIME HORIZON: Immediate.

CITATION: "Big Isle Crime Rate Erupts," Hugh Clark, Advertiser Big Island Bureau, *The Honolulu Advertiser*, January 22 1995: A1, A19.

TREND -- Reading, Writing, and -- Violence?: "By the year 2000, Hawai'i's public schools may be teaching students skills to prevent violence. The Violence Prevention Bill introduced by the Women's Legislative Caucus was passed last week by the Senate Education Committee and now heads to the Senate Ways and Means Committee.

Carol Yahner, of the Hawai'i State Coalition Against Sexual Assault, said yesterday that violence prevention should be as important in schools as reading, writing and arithmetic. The bill...mandates the Department of Education to integrate violence-prevention messages and skills into the curricula, pre-kindergarten through 12th grade, by the year 2000." If passed, the bill would provide money for: • one time grants for Hawai'i's 242 schools develop a curriculum plan and violence-prevention courses for school staff and parents; •

four school and community projects to create model curricula that other schools may use; • the University of Hawai'i College of Education to add violence prevention to its teacher training; • establishing a Governor's Violence Prevention Council to set standards and monitor progress of the entire program, from awarding grants to implementation. "We're talking about dealing with the roots of violence, which aren't about hitting, per se, but about tolerance, respect, getting along with other people."

IMPLICATIONS: A positive and innovative approach to this problem. Awareness of the depth of violence in our society, and the invisibility of so much of it is the first step. Education is an excellent second step in violence prevention, funding is the third. A little "bit tax" anyone?

TIME HORIZON: Immediate.

CITATION: "After the 3 R's, kids may study violence," Tino Ramirez, *The Honolulu Advertiser*, February 12 1995: A3.

DISCUSSION -- DECLARING PEACE ON CRIME: "Critics of mainstream crime policy have not developed a comprehensive vision of alternative strategies and have thus cede the crime "issue" to the society's most conservative forces. Robert Elias is chair of legal studies at the University of San Francisco. He sees the need for a comprehensive "get-smart" alternative to the mainstream "get-tough" view. People want peaceful communities. Only justice can produce that peace, but only peaceful, nonviolent means can produce justice, including criminal justice. A peace movement on crime would not perpetuate conventional "law-and-order" strategies. It would not promote some of the self-serving perspectives of the criminal-justice industry, nor would it embrace official responses designed to co-opt victim movements and citizen action. Most importantly, it would not analyze the "crime problem" piecemeal, apart from contemporary social conditions. These are among the reasons why mainstream crime policy fails.

A strategy of active non-violence may well be the only realistic way of reducing crime and victimization. Instead of waging endless (and losing) "wars" against crime, perhaps it is time we gave peace a chance. Such a strategy would include: "better thinking on crime", for example, "The recent Seville Statement on Violence, signed by many of the world's leading researchers, concluded that human beings are not inherently violent; violence results from social conditions...We should develop a notion of "criminology as peacemaking". Peace on Crime would also include a "new emphasis on communities", "Conventional crime policy emphasizes evil individuals as the source of crime and rallies communities against the criminals in their midst."

Government-sponsored community programs stress police strategies, target-hardening hardware, neighborhood vigilance, and official control. Yet, Neighborhood Watches and other government-inspired strategies have little effect on crime, since they largely ignore crime's deeper sources in American communities. And as these strategies fail, vigilantism increases...Rather than restrictive social control, we need more democratic public control--community revitalization and social change actually directed by the communities residents, not co-opted by officials. We need community crime control programs to be focused not on creating armed fortresses but, rather, on analyzing the fundamental sources of violence and crime in our neighborhoods -- in short, a nonviolent enforcement effort focused on community-problem solving...A revitalized citizen politics is needed to convince people that we can reduce crime and have some control over our own lives. We must shake off the debilitating assumption that we can only do what we've always done."

IMPLICATIONS: The strategy proposed here faces serious and obvious political obstacles, however, the author believes it is unlikely to fail as miserably as official programs have so far. Indeed, he sees it as a strategy that could not only succeed against crime but could also help to undo various other kinds of victimization occurring in American society.

TIME HORIZON: Immediate, however it may be long-term before we see it.

CITATION: "Declaring Peace on Crime," Robert Elias, The Humanist, March/April 1994: 7-11. Elias is coeditor of Rethinking Peace (Lynne Rienner, 1994).

TREND -- Community Policing?: Recent reform efforts growing out of a search for new ways to prevent crime and disorder are generally described as community policing. "Examined operationally, community policing involves consultation, adaptation, mobilization, and problem solving (CAMPS). Although the elements appear to represent the strategic future of policing, it is premature to say that their adoption is assured...The 1990s are a watershed period in policing because very different paradigms are competing for the hearts and minds of police officers: on the one hand, the authoritative intervention-symbolic justice model; on the other, the CAMPS model (Keeling and More 1988). The current debate represents a great deal more than a choice among strategies and tactics, important as these are. Community policing represents a potentially momentous shift in the location of authority over the police. Modern police were initially created by states to

protect the interests of government. They preserved the order for the elites...as a result, the primary functions of the police were the suppression of collective unrest and the regulation of populations, what might be called state-directed policing.

Early in the twentieth century a revolution occurred the policing of democratic countries: police became responsive to the security needs of the general public. Their ability to do this was facilitated by changes in technology, especially the invention of the telephone and automobile. The demand for police services no longer emanated solely from the state but was distributed across a multitude of individuals. Demand was effectively disaggregated, and the police developed a new set of masters. The police became democratically responsible in terms of their day-to-day operations. This was a revolutionary development that has yet to occur in many countries...the political significance of police forces that respond instantly to the needs of individuals should not be downplayed. The change from earlier policing represents the domestication of the coercive power of the state. It is a qualitative advance in political evolution."

"Community policing creates yet another source of authority over police activities. It does so by creating a new level of demand that is inserted between the state and the disaggregate public. Through CAMPS the police are required to respond to interest and need collected and articulated at a new place, namely, small communities or neighborhoods. Community policing is not simply a change in tactics; it is a change in the source of the demands that are made on the police.

Until now, the police were politically accountable to states but operationally accountable to individuals. Community policing challenges again the customary distribution of authority over the coercive power of the state. If communities can define police work a new center of political power has been established. Community policing represents a renegotiation of the social contract between the police and society."

IMPLICATIONS: "In modern democratic societies the police bear the primary responsibility for ensuring public safety because law enforcement is viewed as the primary solution to crime. For several reasons this total reliance on law enforcement is unwise and should not be allowed to continue...Experts on crime, including the police, understand very well that crime cannot be prevented exclusively through law enforcement. As long as police monopolize crime prevention, the search for other ways of reducing crime will be half-hearted. By pretending to be the solution to crime, police become part of the problem."

TIME HORIZON: Immediate to long-term.

CITATION: Bailey, Police for the Future 1994; and Bailey 1985, title unknown.

TREND -- Calls to Rationalize Drug Laws: France's national ethics committee has called for a radical change in the country's drug laws, asking for regulation based on the drug's toxicity and ability to make users dependent on it, with punishments for illegal use of

drugs reflecting the severity of their effects and their harm to others. The committee pointed out that "no coherent scientific basis" exists for the distinction most countries make between legal and illegal drugs: alcohol, tobacco, and some painkillers can be just as dangerous as some illegal drugs. Even in America, as drug-related crime soars, calls to legalize become more vociferous. At the same time, rapid advances in neurobiology, neurochemistry, and neurophysiology offer new information about the structures and processes of addiction. These developments may allow a straightforward treatment for the addictive personality, no matter what the addictive focus. On the other hand, those same advances also offer the possibility of developing unimaginably powerful illicit drugs, beside which the pharmaceuticals cooked up in street labs today will pale.

IMPLICATIONS: Rationalizing drug laws to take into account the fact that some illegal drugs are only mildly addictive, where, for example, nicotine is wildly addictive, would simultaneously present the faces of prohibition and licentiousness to society, calling into question many people's assumptions about what constitutes vice. Concern for personal health, one's internal "microenvironment," is connected with the value shift supporting environmentalism, and that concern would tend to support this trend as well, as would any advances made in anti-aging protocols: who would want to ruin the body they'll be living in for over a century, two centuries? It is certain to be fought hard by the tobacco companies, the liquor companies, and all their die-hard customers. A host of related social pathologies have their roots in the addict's lifestyle and those might decrease. Immediate governmental effects would be a reduction in funding of drug interdiction programs, certainly those beyond our borders. It would also cut court caseloads, and reduce prison populations. Finally, it would undermine organized crime to some extent. As crime organizations have proven themselves resilient, flexible, and fully capable of keeping up with the latest changes, it is entirely likely that branch of their operations would simply go legal.

TIME HORIZON: Long-term, barring sudden discontinuous change in society and/or technology. It could take decades for rationality to overcome conservatism within this society, but given the advances occurring in our knowledge of mind-brain-body interactions and their implications for sanity and health, new social perspectives on drugs may emerge.

CITATIONS: "Discontinuous Change and the War on Drugs," Jefferson Fish, The Humanist, September/October 1994, p. 14-17; "The Highs & Lows of Prohibition," David Concar and Laura Spinney, New Scientist, No. 1945, 1 October 1994; "Prisoners of Pleasure," David Concar, New Scientist, No. 1945, 1 October 94; "How to Heal the Body's Cravings," Rosie Mestel and

David Concar, New Scientist, 1 October 94; "Rat's relapse show that old habits die hard," J. Altman, New Scientist, No. 1946, 8 October 1994, p. 18.

DISCUSSION -- CYBERSPACE / False data -- False Arrest: A lively argument in a case of false arrest had Supreme Court justices debating whether prosecutors can use evidence seized by police officers on the basis of a police computer's erroneous indication that a valid search or arrest warrant was outstanding. The Arizona Supreme Court refused to excuse an error on the Phoenix police computer system that showed an outstanding arrest warrant on a charge of failure to answer a traffic violation that had in fact been canceled seventeen days earlier. "As automation increasingly invades modern life, the potential for Orwellian mischief grows," the state court said in January in its opinion barring the state from using the seized drug evidence. "Under such circumstances, the exclusionary rule is a 'cost' we cannot afford to be without", the opinion said.

Justice Souter asked, "What about the argument that because of the great currency that computerized information has, the risk of harm is greater than when you were dealing with pieces of paper. So if police choose to use computers, they assume the risk."

Justice Ruth Bader Ginsburg asked, "Isn't it a powerful deterrent that if you don't keep the records updated, you can't use the evidence?"

This was a fast moving argument, and the Justices appeared intrigued by the case, *Arizona v. Evans*, No. 93-1660. But a majority seemed reluctant to make special rules for police computer errors.

IMPLICATIONS: -- Electronic communication contains numerous, intriguing questions for court justices. Computer errors, computer fraud, and other cases from cyberspace will continue to appear in the courts. Refer to the main environmental scan report. (One recent computer communication "breakthrough" appears to be "Homework Helper", a news service available now on Prodigy. Although sounding like a simple Internet data source for children, it apparently is incredibly powerful and easy to navigate for adults with angst, as well as any child. Indeed, it is more like the powerfully elegant simplicity of a physics equation.)

TIME HORIZON: Immediate to long-term.

CITATION: "Court Weighs Ramifications of Digital Age," Linda Greenhouse, *Special to the New York Times*, December 8 1994.

DISCUSSION -- GLOBAL / Jurists Without Borders: "An open invitation for second horror--another round of massacres--lies in the Rwandan Government's failure to establish

a legal process to bring the killers to justice immediately. Rwanda has no legal system that can deal with killers now or in the foreseeable future. It is virtually a lawless state: no police or prosecutors function, and there are almost no judges and courtrooms. No one is more aware of the problem than the Government...It is impossible to tell how many of the grand total of 9,000 imprisoned are wrongfully incarcerated. There are fewer than 10 judges to try the tens of thousands involved in the massacres...It would take too many years to build a body of lawyers and judges to try the cases. Even if Rwanda could do so it might be seen as victor's justice. The international volunteer group Doctors Without Borders has been providing Rwandans with medical relief. The country needs a Jurists Without Borders--a group of lawyers and judges familiar with criminal prosecutions that would try the cases in Rwanda under Rwandan sovereignty. The international community has sent food, troops, and medical aid to meet Rwanda's emergency needs. Now it must find lawyers and judges to help restore the rule of law."

"Nine months after Rwanda's horrific massacres, unwanted babies by the hundreds, even thousands, are being born to women raped by rampaging Hutu soldiers and militiamen. "The scope of the rapes is unimaginable...virtually every woman or girl past puberty who was spared from massacre by the militia had been raped. Tutsis and the Hutu intelligentsia were the main victims of rapes. Rwanda's National Population Office estimates the number of rape-caused pregnancies at up to 5,000. According to health officials, up to 90 per cent of the rape-impregnated women do not want to keep the babies. Many women have sought abortions, even though they are illegal, and many women have attempted abortions on themselves.

IMPLICATIONS: "The United Nations Security Council, reacting to Bosnian reports of widespread rape in 1992, designated systematic mass rape as a crime against humanity. But there have been few concerted attempts to prosecute those responsible for rapes either in Bosnia or Rwanda." Speed is important, however, if the Government moves too quickly against its military officers or others accused of massacres and rape, it will be accused of setting up kangaroo courts. There are also increasing questions about whether it has the ability to prevent its soldiers from committing revenge murders. "A legal system must be created that is fair to the Hutus and Tutsis. But an international tribunal being assembled in The Hague is no real solution. The power of the tribunal will be more in the nature of a documentary of war crimes, rather than offering official justice. The cases will be tried if not in The Hague then certainly outside the areas where the killings and rapes occurred. Very few will be extradited and tried." It is essential for the Rwandan Government to show that it can keep its citizens safe from yet another wave of massacres and rapes. It is also essential that the newly created category of crime against humanity,

systematic mass rape, not be left out of the justice process. In restoring the rule of law the international community must restrain itself from taking it upon themselves to create a Western legal system for Rwanda, one which may never provide the justice all are seeking. The nature of the legal system should shaped in accordance with Rwanda and it's culture.

TIME HORIZON: Immediate to long-term.

CITATION: "Jurists Without Borders," Martin Garbus, *New York Times*, November 17 1994: A 23; "Rapes Haunt Rwanda," David Crary, *The Honolulu Advertiser*, February 11 1995: A8.

APPENDIX

Probably the best basic resource for emerging issues analysis is Future Survey, a Monthly Abstract of Books, Articles, and Reports Concerning Forecasts, Trends, and Ideas about the Future. Michael Marien is the editor of this publication by the World Future Society. Future Survey cover a wide range of material and topics: I. WORLD FUTURES; II. THE GLOBAL ECONOMY; III. WORLD REGIONS AND NATIONS; IV. DEFENSE AND DISARMAMENT; V. TOWARD SUSTAINABILITY; VI. ENVIRONMENTAL ISSUES; VII. FOOD AND AGRICULTURE; VIII. SOCIETY AND POLITICS; IX. THE ECONOMY AND CITIES; X. HEALTH; XI. EDUCATION; XII. COMMUNICATION; XIII. SCIENCE AND TECHNOLOGY; XIV. METHODS TO SHAPE THE FUTURE. Future Survey Annual provides a compact selection from the year's best, and allows for easy tracking over time. Future Survey Annual 1994 includes a highlight on Drugs and Crime on pages 101-104, under section VIII. SOCIETY AND POLITICS: p 84.

Two 1994 monthly publications offer a more complete range of material on crime, and on related topics. Future Survey, February 1994, 16:2, (Items 94-051/94-100), has sections I. Society: 2; II. Government: 6; III. Cities: 9; and IV. Crime: 12-15. From the Crime section summary:

"Crime Control?" Crime may or may not be increasing, depending on definitions and who counts what (090). But criminal justice is clearly a growth industry (088/089), and everyone can agree that there is too much crime. But what to do? A long-term attack on the roots of crime (090/091), or merely "getting tough" with more cops and prisons (092), which, to many, doesn't work. Will electronic supervision technology make a significant -- and positive -- difference? (093) In addition to widespread concern over violent crime (092), white collar and environmental crimes are emerging issues (094), and hate crime is increasing (095). Child sexual abuse (096) and wife beating (097/098) are widespread -- not necessarily increasing -- and gaining more attention. Prostitution is a worldwide phenomenon, and difficult or impossible to stop; in some countries it has been decriminalized (099). And there are sharp pro/con views on whether to decriminalize drugs (100).

Future Survey, October 1994, 16:10, (Items 94-451/94-500) has sections I. Cities: 2; II. Crime and Justice: 4-6; III. Economy and Work: 7; IV. Social Problems: 12; and V. Science and Society: 14. From the Crime and Justice section summary:

"New Crime -- and New Justice?" Positive visions of urban life are offset by negative visions of crime. The mafias of the world have joined together in Russia's vast "safe house" (400), and crime seems likely to worsen as smart criminals use infotech (462). US criminal law enforcement has been steadily

internationalizing (463), but can any government agency cope (460)? These new threats might prod rethinking about criminal justice resources. They might redirect efforts to the top of the "crime funnel," rather than to the stem (464; also 461). The futile and costly "war on drugs" might be replaced by efforts to minimize harm (465). The "rage to punish" could be replaced with the goal of public safety (466). Community policing is promising (467), perhaps especially so if the community police function is separated from law enforcement (468), and much can be done to curb violence (469).

"The Rage to Punish is a costly American obsession."

-- Judge Lois Forer on mandatory sentencing, #94-466.

"[We must try] to stop crimes by the millions, rather than lock up criminals by the thousands."

-- David C. Anderson on the crime funnel, #94-464.