

National Association of
State Judicial Educators



School of Criminal Justice
Michigan State University

**THE COURTS AND
JUDICIAL BRANCH
EDUCATION:
*Creating Their Future in
the New Millennium***

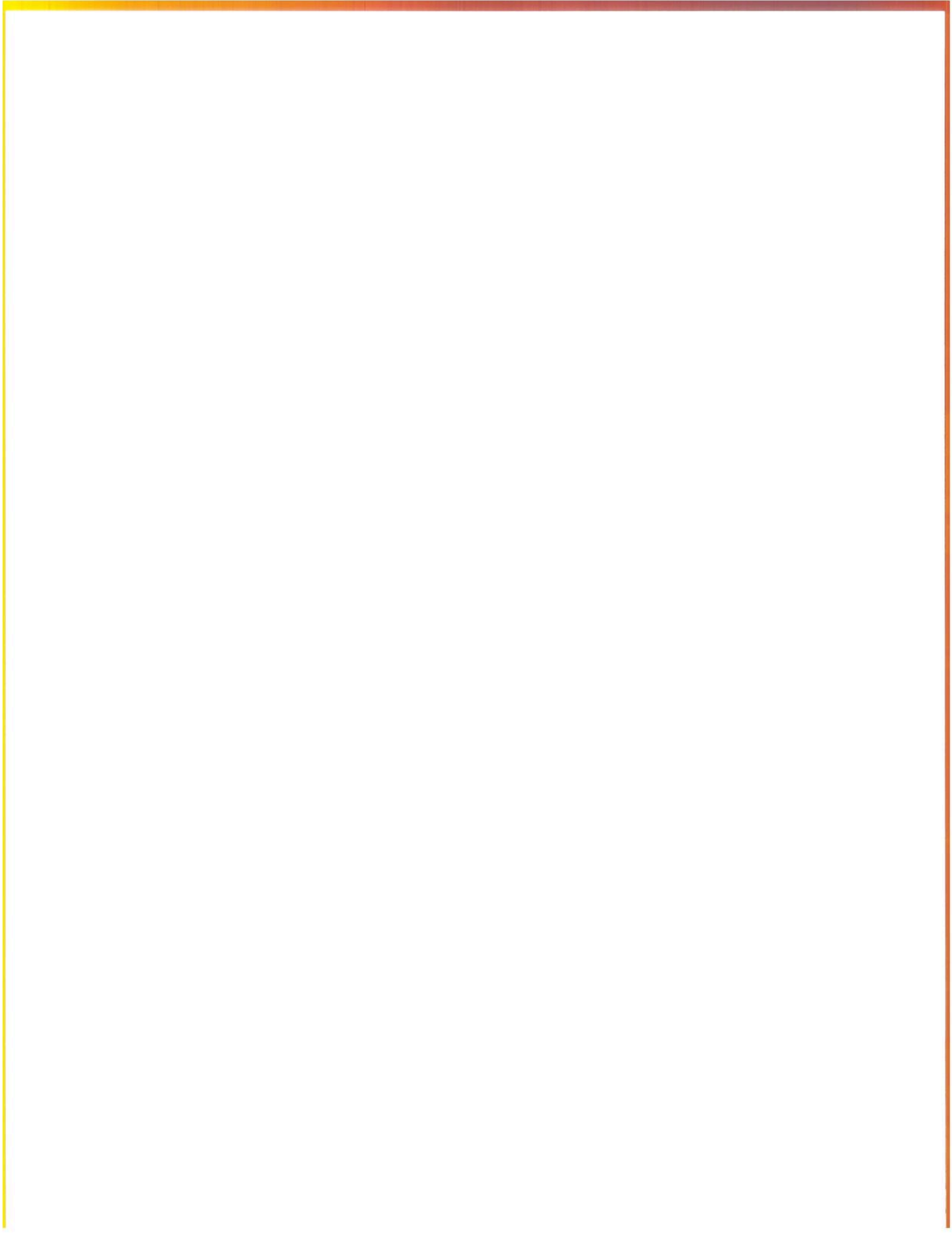
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**The Courts and Judicial Branch Education:
Creating Their Future in the New Millennium**

Maureen E. Conner
Editor

1999

**The Judicial Education Reference, Information
and Technical Transfer Project**

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FOREWORD

In its 1997 Grant Guideline, the State Justice Institute (SJI) solicited proposals to convene a national symposium on the future of court education that would provide guidance to the courts, judicial branch educators, and SJI on a wide variety of critically important issues. The proposals were to include how to best use new technologies to deliver education, how to design judicial branch education in a way that would enable judges and court staff to develop personally as well as professionally, how to best integrate education into the core function of the courts, and how to empower judicial leaders to plan the future of their education and their courts.

In response to the solicitation, every major national judicial branch education provider united to collaborate on a single proposal that promised to do everything we asked, and much more. The collaborators include the National Association of State Judicial Educators, the National Judicial College, the National Center for State Courts, the Federal Judicial Center, the American Judicature Society, the National Association for Court Management, the National Council of Juvenile and Family Court Judges, the American Academy of Judicial Education, the Judicial Division of the American Bar Association, and the Judicial Education Reference, Information and Technical Transfer (JERITT) Project at Michigan State University. Together, they have developed a thoughtful and exciting symposium that will enable judges, educators, and court managers to take the lead in planning the future of judicial branch education nationwide.

This publication articulates the principles of “futures thinking” that will drive the work of the symposium. Clement Bezold, Kathy Mays, and Beatrice Monahan have been important contributors to the court community’s futuring efforts for more than a decade. Dr. Bezold led participants at the 1990 National Conference on the Future of the Courts through the process of envisioning the court system they wanted to see in place in the year 2020 and has written several publications to facilitate judicial branch visioning. Ms. Mays and Ms. Monahan have been key actors in the Virginia court system’s futures planning efforts that have been institutionalized over the past 10 years. Dr. Maureen Conner, the author of the final piece in the monograph, is the director of the JERITT Project, which has evolved over the past decade to become the informational infrastructure of judicial branch education nationwide.

Together, they have produced a work that should be required reading not only for the participants at this October’s symposium but for anyone who is serious about ensuring that the American judiciary will have the knowledge, commitment, and resources necessary to deliver justice in the century just ahead. I strongly commend it to your attention.

David I. Tevelin
Executive Director
State Justice Institute

ACKNOWLEDGMENTS

This monograph is a collection of works by four authors who have a commitment to the art and practice of futuring, the courts, and/or judicial branch education. Their contributions made this monograph possible. The individuals who made it a reality are members of the JERITT Project family, Jennae Rozeboom, Shannon Green, who assisted with a large part of the editing and also created the monograph's unique design,¹ and Daniel Klass. Their dedication, discerning eyes, and probing questions turned the individual submissions into a cohesive whole entitled: *The Courts and Judicial Branch Education: Creating Their Future in the New Millennium*. This publication would not have been completed without them.

INTRODUCTION

The purpose of this monograph is to act as a primer for those individuals considering or beginning a futures planning process in the courts in general, judicial branch education in particular, or both. It should be especially helpful to those attending the National Symposium on the Future of Judicial Branch Education in St. Louis, Missouri, October 7–9, 1999. This monograph provides us with 1) information on selected trends that will likely affect state courts; 2) futures terminology, definitions, and processes; 3) a review of the stages involved in the creative process; 4) recognition of the blocks to creating; and 5) a challenge to think and do “outside of the box.”

Chapter One, “Exploring Trends Affecting State Courts,” was written by Kathy L. Mays, Beatrice P. Monahan, and Clement Bezold. Most of the trends noted in this chapter were identified by Ms. Mays and Ms. Monahan in the course of the “environmental scanning” they perform for the Virginia court system. Ten trends are offered with discussion about their impact on the futures of the court.

- ◆ The Multicultural Society and the Courts
- ◆ Technology as Currency: Life in the 21st Century
- ◆ Imbalances in the Pace of Change
- ◆ Fulfilling the Service Imperative
- ◆ Therapeutic Justice: Redefining the Role of the Courts in Society
- ◆ Adapting to a Global Environment and to the End of “Closed Systems”
- ◆ Privatizing Justice
- ◆ Vision, Visionary Leadership, and Changing “Value Added”
- ◆ Breakdown/Breakthrough of Systems
- ◆ Macrotrends: The Environment and Food

By offering these trends, the authors inspire us to consider the potential impact these and other trends can have on the courts in the near and distant future. They act as a “wake-up call” to activate our desire and marshal our resources to create a future that ensures the viability, vitality, and nobility of the courts.

Chapter Two, “Futures Tools and the Courts: Better Understanding, Choosing, and Creating the Future,” written by Clement Bezold, broadens our knowledge of the terms and processes involved in futures work. Dr. Bezold provides an overview of some of the futures work that has taken place in various courts across the country. He closes the chapter with an explanation of futures thinking and activities that lead to the identification and definition of futures tools such as: 1) trends and forecasts, 2) scenarios, 3) visions, 4) audacious goals, and 5) strategies.

Dr. Bezold helps us understand the importance of futuring in this time of rapid global change. More importantly, he gives us the tools to do just that.

Chapter Three, “Creating the Future: Seeing, Knowing, and Doing in New Ways,” was written by Dr. Maureen Conner with two purposes in mind. The first was to explain the thought and action stages involved in creating something new, whether it be a new case management system, a new operating principle, or a new painting. The second purpose was to encourage us to think and do “outside of the box.”

This chapter leads us through the nine stages of creating and identifies and explains the blocks that surface in ourselves and others when we move from the known to the unknown, which is what creating demands of us. It reviews a number of social and cultural changes that have been achieved through one or more persons thinking and doing “outside of the box” long enough to cause shifts in our social and cultural constructs. As an example of this, we look at Leonardo da Vinci’s accomplishments and explore his thought processes in the hope that both can teach us how to use all of our capacities to create the future of the courts and judicial branch education. The chapter closes with two workbooks that can help us become more comfortable with the creative process and identify the possible impediments that await us.

CHAPTER ONE

Exploring Trends Affecting State Courts

*Kathy L. Mays
Beatrice P. Monahan
Clement Bezold*

Introduction

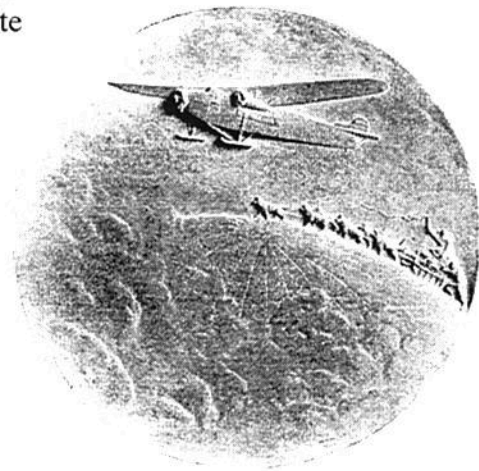
Identifying and monitoring trends of importance to the courts is a recurring activity among some judiciaries. This is done to alert the court system to trends occurring in its environment and to provide early notice of threats and opportunities. This chapter is based primarily on the work of the Virginia judiciary in trend monitoring,¹ which is periodically summarized by Kathy L. Mays, Director of Judicial Planning, and Beatrice P. Monahan, Senior Planning Analyst, Office of the Executive Secretary, Supreme Court of Virginia. To these were added some more global trends observed in the work of the Institute for Alternative Futures (IAF), through its president, Clement Bezold.²

The Multicultural Society and the Courts

It has been said of our age that we need to think globally and act locally, and concurrently, that the more global we become, the more tribal we act. Both observations reflect a need for balance between the soaring possibilities of global opportunity and the enduring need for identity as we move into the 21st century.

The power of ethnic identity is evidenced by an increasing number of countries in the world, by continuing struggles to establish additional countries, and by episodes of genocide and "ethnic cleansing" to "purify" the populations of some countries. In the United States, divisions between races persist despite years of effort to remove them. Hate crimes are often the most visible reminders.

Legal and illegal immigration, as well as differing birth rates among ethnic groups, continue to change the demographics of many countries throughout the world. Sometime



after the middle of the 21st century, no single racial or ethnic group will constitute a majority of the United States population. New Mexico already has become the first state composed of a majority of minorities. As the various racial and ethnic communities gain in numbers and in political power, efforts to focus attention on and address the needs of each of these groups will increase.

Another group whose needs will impact the future is the elderly. When the baby boomers begin to reach age 65 in 2010, this group will change the conventional role of the elderly in society through its sheer force of numbers.

In some instances, evidence of segmentation is visible. Between three and eight million Americans are estimated to live in gated communities. People choose to live in these communities for a variety of reasons, such as fear of crime, a desire for status, or lifestyle preference. The increase of such communities has the potential to reduce social contact and weaken bonds of mutual responsibility.

The technological explosion contributes to other forms of societal segmentation. The capacity to seek out and form “virtual communities” with like-minded people empowers individuals with similar interests or agendas in diverse locations to come together in ways that were not possible until recently. The impact is felt in the political arena and in the courts. Using the Internet, even relatively small groups have the capacity to barrage legislators and others with materials supporting their issues and positions (e.g., sharing techniques through the Internet, common law court advocates have filed liens against judicial officials).

As more and more aspects of 21st century life migrate to the World Wide Web, further segmentation will be evident between those with access to technology and those without. Whether the cause is lack of economic resources or lack of education, those without—the technology “have-nots”—will be at a significant disadvantage. In the meantime, those with good skills in this area are among the most sought after and highly paid members of the workforce.

People accustomed to having their individual tastes, needs, and desires catered to by the commercial sector are likely to expect similar treatment from the public sector. Carried to an extreme, this attitude has the potential to undermine a cohesive society by eroding a sense of community and the importance of the common good.

While courts have traditionally been the forum for *resolving* disputes, their role has now become a *focus of* dispute for some segments of society. Some groups look to the courts to address social issues of concern to them that are not being adequately handled elsewhere in society. Other groups, feeling the courts are not the proper forum for such changes, seek legislation to contain the jurisdiction and discretion of the courts.

This trend toward a multicultural society will also influence, if not contribute to, a redefinition of certain aspects of justice as peoples from beyond Europe become more significant in the United States population. Likewise, judicial personnel, both judges and staff, increasingly will reflect the populations they serve. If the courts otherwise perform effectively, this more diverse workforce is likely to increase respect for the courts in society.

Technology as Currency: Life in the 21st Century

The pervasiveness of technology in our lives at the end of the 20th century is symbolized by the Y2K problem, a legacy of earlier computer environments in which all dates entered in computers used only the final two digits for the year. The public and private sectors will have spent millions of dollars to assure that computer systems will be viable after January 1, 2000.

It is difficult to find any facet of life not being transformed by the rapid advances in technology. Work, education, health care, leisure activities, and commerce all have expanding technology-based dimensions. Not only how we do it, but what we do is changing because of technology. As fields such as genetic engineering, artificial intelligence, and nanotechnology (the ability to construct nearly anything we need from the molecular scale upward) mature, they will have the potential to revolutionize even more aspects of world society.

The explosion in information technology continues. In 1994, only 3 million people were connected to the Internet. It was recently reported that a new user connects to the Internet every seven seconds. Some 15% of the United States population used e-mail in 1998, with a prediction of 50% within five years. Millions of Americans now telecommute and work at home or in satellite offices linked electronically to the job site. In the global marketplace, a "world" of talent is available to employers.

Technological capabilities also are changing conventional notions of how medicine is practiced. Telemedicine, which allows interactions between doctors and patients in different locations, provides the capability for local consultations with distant specialists or routine medical care in prisons without transporting prisoners to the doctor.

With 24-hour availability of the World Wide Web, on-line commerce knows no time restrictions. Information can be obtained, purchases made, bills paid, messages sent and received, all at a time convenient to the user. Once the remaining security issues surrounding purchases over the Internet are resolved, electronic commerce will likely experience a tremendous surge of activity, leaving state and local governments to deal with questions of lost tax revenues.

The widespread awareness of technological capabilities and their growing use in the private sector has led to significantly increased expectations that governments should offer such enhanced connectivity to those it serves. Growing numbers of state and local governments, as well as state and local courts, utilize Web pages to provide information or permit citizens to conduct business both during and outside traditional business hours. A number of states are venturing into the realm of “cyberpolity,” with citizens being able to vote over the Internet. Some experts suggest that there will be voting via the Internet in parts of California as early as 2000. “Cyberjury service” is likely to be considered during the next decade.

Other opportunities for employing technology in the courts abound. Video-conferencing technology is being used in courts throughout the country for conducting a variety of court hearings and appellate arguments. Such applications offer a number of advantages, including reducing prisoner security risks, increasing convenience to attorneys and judges, and saving money. The potential for “virtual trials” involving parties, witnesses, judges, and attorneys in different locations looms on the horizon. Electronic case filing provides the convenience of round-the-clock availability, reduces the amount of paper involved for courts and attorneys, automates much of the noticing required in court cases, and allows on-line payment of filing fees. Courts taking payments of costs, fines, and fees over the Internet offer convenience to court users and eliminate some of the congestion in the courthouse.

Yet, there is also a dark side to the promise and potential of technology, for it can also be used for clandestine and unlawful purposes. In order to detect, fight, and prosecute those who use technology in such a manner, the government must have the personnel, equipment and expertise to regulate, investigate, and convict those who use technology to further illegal conduct and enterprises. Also looming on the horizon is the specter of “new terrorism” that relies on striking at the automated systems key to government, banking, utilities, and other infrastructure components of modern society. Disrupting or destroying such systems could have more far-reaching effects than the physical destruction of a single site. Less dramatic, but still potentially dangerous to the public, is lack of quality control on the plethora of information available on the Internet.

Also, in the midst of an increasing reliance on technology, there is recognition of the alienation that can occur if technology continually removes the human element from interactions and transactions. An automated telephone system on which we can never talk to a “real person,” a state-of-the-art hospital in which personal contact with doctors and nurses is rare, or a visit to an on-line museum could cause many members of society to search for a more “human-” or “community-based” experience as a balance to the highly efficient, but cold, technological approach.

One thing is clear: technological innovations will continue to change the world. Those individuals, organizations, or institutions that embrace technology and what it can

accomplish will move forward. Those who do not will be left behind, trying to meet 21st century demands with 20th century tools.

Imbalances in the Pace of Change

Life has always involved change, but as we move into the new millennium, we do so with the knowledge that the magnitude and pace of change are different from what people have experienced in the past. Rapid advances in technology, the driving force in so many aspects of society, are outstripping our ability to change in other areas of life. The result is an increasing gap between technological and social change.

For example, developments in science and medicine herald dramatic improvements in life and health. Yet, they also raise ethical and social concerns that may pose significant dilemmas for society. Laboratories have and are continuing to develop ways to “grow” replacement body parts, the most successful of which to date is artificial skin. Implanting small computers in the body is on the horizon. Increased understanding of brain functions may lead to new ways to deal with brain-damaged individuals and to treat abnormal brain functions. Some see genetic engineering technologies as the most powerful of the 21st century. Despite the ethical storms surrounding it, experimentation with the cloning of animals continues. Cloning humans, even if not done legally, is likely in the next few years. Nanotechnology, the creation of machines at the molecular level, is moving from science fiction to science fact. Part of the promise of nanotechnology is the creation of micro-machines that can do work humans cannot, such as repairing human organs without surgery or handling dangerous industrial materials.

With the impending completion of the Human Genome Project, which aims to map each gene on its chromosome and to sequence the entire stretch of human DNA, we may be able to understand, predict, prevent, and design genetic capabilities. Genetic engineering of plants and animals, already a reality, promises to increase yield of and to improve the quality and freshness of the food supply. But fear of unintended consequences stemming from genetically altered plants and animals is causing governments to study and to regulate the use of such foodstuffs and concerned individuals to be skeptical about the safety of these foods.

Developments in biometrics, the use of unique body traits for identification purposes, may lead to improved security, reduced theft, and more convenient consumer transactions. In addition, improvements in fingerprinting, iris scanning, face recognition, hand geometry, and voice printing are potential additions to such security mechanisms.

One interesting side effect of change at this point in time—one that will doubtless be corrected in the next generation—is the generally inverse relationship between technological affinity and age. It is the young, and in some cases the very young, who most understand and are most comfortable with the capabilities of technology. They grew up with it; it is their

reality. Witness newspaper reports of college or high school age children who have developed successful computer-based businesses and are well on their way to becoming millionaires in their twenties. While older individuals can offer companies institutional memory and a seasoned perspective for contemplating the long-term effects of decisions and changes, they are often less enthusiastic about change and the potential of technology. This is not always a winning combination in today's highly competitive environment, as reflected by the increasing number of 20- and 30-year-olds in "senior management."

In the world of business, changes within an industry, the marketplace, or the economy can have significant and rapid effects. In order to maintain the flexibility needed to respond to these alterations, companies downsize and supplement their core staff with temporary ("just-in-time") workers, as needs demand. Thus, another result of change is that it impacts the relationship the employee has with the job and the employer. The days of working for one company for an entire career are fast fading. No longer is a person likely to take a job out of college and expect to retire from that company. Today, not only is it acceptable to have many jobs during a career, it is not uncommon to have multiple careers. In some fields, it is even expected that individuals will change companies frequently. To survive in this environment individuals must take charge of their own potential, through a process of lifelong learning, to develop useful and marketable skill sets.

In a world where most everything we buy is likely to be outdated or obsolete in a short period of time, patterns of ownership are also changing. Some see the future in this regard as one in which we buy less and lease more—an appealing option to anyone concerned that their new computer is already near obsolescence by the time it is paid for. Another impetus for this type of change comes from environmental concerns over the growing volume of appliances and other durable goods that typically end up in the landfill. Proposed solutions include leasing from the manufacturer, who then becomes responsible for a product's disposal, and who may be more likely to find ways to reclaim or recycle much of what is now disposable.

With the world changing around them, the courts, too, will need to adapt. In addition to the obvious need for more and more current technology, there is a demand for courts, like businesses, to be more responsive to those whom they serve. Finding ways to improve and to aid in the internal management of the courts, to provide better calendar management, and to reengineer the ways in which courts do business with the public are all challenges for courts on the verge of the 21st century.

Fulfilling the Service Imperative

The last half of the 20th century witnessed the transition of the Industrial Age and its manufacturing economy into the Information Age and its service economy. A hallmark of this transition was a definable shift in emphasis within the business world from mere production to the actual performance of a company vis à vis its relationship to customers. Within this shift, there was an intense preoccupation with service quality, the “service imperative,” as it is called. Whereas having a first class consumer service strategy used to give a company the competitive edge, it is now seen as a prerequisite to being competitive.

To thrive in this environment, companies invest heavily in the staffing, training, and support of their customer service strategies. As a result, jobs in service industries continue to be areas of fast growth. Data processing and hospitality lead the way. Service is no longer an industrial by-product; it is a powerful economic engine in its own right.

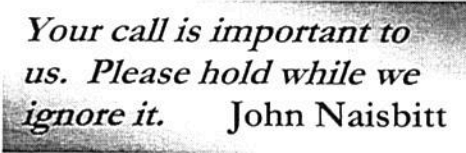
The increased emphasis on service quality has also been influenced by growing consumer activism and empowerment since the 1970s. The public became disillusioned with the inability of many institutions, including the government, to have the public’s best interest at heart, to be above board in their dealings with the public, and to deliver quality products and services. Consumer activism and empowerment have led to a more critical and self-reliant citizenry that is redefining its relationship with both business and government and challenging them to provide greater accountability, integrity, quality, and service. In the citizen’s definition, quality service is defined not only by the outcome they receive, but also by the manner in which they are treated throughout the entire process of dealing with an organization. For the judicial system, this means that citizen confidence in the courts will be measured not only by their perceptions of the quality of the results in their cases, but also by the quality of their entire experience in using the court system to resolve disputes.

While nationally-conducted public opinion surveys continue to show a relatively high overall impression of the judicial system, certain aspects of the courts’ performance still resonate poorly with the public: unnecessary court delay, inefficiencies in case processing, multiple appearances by litigants and witnesses, the lengthy time it takes to dispose of some cases, and, of course, the cost of litigation. Addressing these concerns and improving the quality of service for all who use the court system in the next century is crucial to continued public trust and confidence in the courts in an era where satisfaction with service typically dictates who gets and keeps the customer’s business.

In a world typified by change and technological advances, the courts should welcome the opportunity to design new approaches to service delivery. When technological capabilities are combined with user-friendly applications, both court staff and the public will benefit. Inquiry terminals in the clerk’s office, dial-in systems for accessing court schedules and records, Internet access to information and for the purpose of making payments or filing papers, hearings conducted by tele- and videoconferencing, and the potential for trials in

“virtual courtrooms” are but a few of many possibilities. Appropriate use of technology can free staff time for dealing directly with the public on matters that benefit from one-on-one contact; provide more service options to the public; reduce paperwork, thus saving time and money; and generally contribute to the courts and court staff doing a better job.

This is not to say that technology should be embraced without caution. Inappropriate use of technology may create more problems than it solves when it leaves out the human element. One example that irritates many of us is the extensive use of voice answering systems that never allow us to talk to a human being.



Your call is important to us. Please hold while we ignore it. John Naisbitt

In areas where technology is not a key consideration, a careful review of services provided in the courts should ask not only, “Are we doing things right?” but also, “Are we doing the right things?” The latter is a much more difficult and a much broader inquiry. It can identify services better provided outside the courts, as well as gaps in services provided by the courts, to better meet the public’s needs and expectations for service.

Whatever the outcome of these inquiries, providing quality service in the courts in the next century will require ongoing investment. Commitment to achieving and to maintaining the desired levels of service will be evidenced in many different ways. Basic to providing consistent, high-quality service are adequate numbers of skilled staff supported by up-to-date technological systems. Pay scales will need to be competitive with other government agencies and local labor markets to attract and to retain quality staff, particularly for information technology professionals. Ongoing training will be a staple so that staff understand, perform, and improve the day-to-day functioning of the courts from a quality service perspective.

Investing in improved management in the courts will translate into better, more efficient, and more responsive service for court users. Components include a commitment to management training for judges and clerks, “team-based” programs for enhanced calendar management, and other activities to encourage creative problem solving.

The courts will also need a means for gauging how well their efforts to improve and to maintain quality service are being received and where new or renewed efforts should be directed. Keeping abreast of changes in the community and in society is one approach. Seeking public input is another. Not only will the courts need to seek such input, they will need to more effectively listen to and assess the public’s needs and expectations. Failure to do so imperils the success of initiatives to improve service quality.

Opportunities for courts to improve the quality of service they provide to the public abound. For example, in relation to the trends mentioned above, as society recognizes the

strengths, challenges, and needs of its increasingly diverse population, both the public and private sectors are moving to identify and to meet the needs of many of their special populations. Increasing numbers of non-English speakers appearing before the courts bring into focus the growing need for certified interpreters, bilingual forms, and bilingual staff. Lingering public perceptions that courts treat people differently based on their wealth, age, sex, and race need to be addressed.

While there have always been *pro se* litigants in the courts, as the cost of legal representation climbs and legal aid funding declines, their numbers are increasing. Finding approaches to provide information and assistance to these and other users of the court system offers the potential of a more satisfactory court experience for litigants and less strain on clerk's office staff. Involving courts, attorneys, and other key stakeholders in efforts to streamline procedures and lessen the time needed to resolve various types of cases also can have dramatic results.

In providing better services to the public, courts will be faced with numerous challenges, particularly as baby boomers become the senior citizens of the new millennium. Increased caseloads dealing with elder care, guardianship, inheritance, property issues, and more will challenge the dockets. Accommodating the increased number of elderly in the courthouse will add another dimension to adaptations required for the needs of the handicapped. Physical accessibility for these individuals will be a significant element of 21st century service, whether it be in facility adaptations, establishing remote locations for service delivery, or implementing procedures (e.g., video or Internet) that eliminate the need to be in the courthouse.

Therapeutic Justice: Redefining the Role of the Courts in Society

Within the past decade, the concept of therapeutic justice has emerged as a new area of the law. Broadly defined, the concept of therapeutic justice or therapeutic jurisprudence proposes that attending to the individual as well as to the legal issues involved in a case leads to more effective dispositions. It attempts to combine a "rights" perspective (focusing on due process, equal protection, and other constitutional safeguards) with an "ethic of care" perspective (focusing on care, interdependence, and response to need). The concept was pioneered in the late 1980s by David B. Wexler, a professor of law and psychology at the University of Arizona, and Bruce Winick, a law professor at the University of Miami.

Therapeutic justice does not replace other legal principles; indeed, other considerations often override therapeutic ones, say proponents. Rather, as they explain, it

enhances the effectiveness of the legal system and courts by offering a different “lens” or perspective from which to view the daily practice of law and justice, balancing insights gathered with other relevant considerations regarding the individual(s) who are before the courts.

While some commentators have argued that therapeutic concerns are the province of sociologists, not jurists, proponents argue that the concepts and practices of therapeutic justice are not new. They contend that for years case decision making by individual judges in the areas of mental health law, family, and juvenile law often have been based upon or consistent with therapeutic jurisprudence principles.

Similar concepts also can be found in other broad, contemporary philosophies that seek to influence how decisions are reached in the criminal justice system. For example, community-focused courts often feature special procedures and staff positions explicitly designed to promote therapeutic case outcomes. Perhaps the best known of these is the Midtown Community Court in New York City, which began as an experiment to intervene meaningfully in the lives of offenders convicted of such misdemeanor crimes as street prostitution, shoplifting, and illegal vending. The court’s designers recognized that commitment of these offenses was often accompanied by problems involving substance abuse, mental health, and public health. In response, the court emphasized immediacy and accountability of sanctions on the one hand and comprehensive social and treatment service delivery on the other. The underlying philosophy is that conviction and sentencing create a “teachable moment” when the defendant is motivated to seek help.

“Drug courts” are considered to be the most recent and widespread example of the application of therapeutic jurisprudence in the criminal justice system. Intensive, community-based treatment, rehabilitation, and supervision programs, overseen by judges and available for certain nonviolent substance abusers, drug courts originated in a single court in Florida in 1989. Drug courts can now be found in virtually every state in the country. In Virginia, almost a dozen drug court programs have been established since 1995, and many other localities are considering applying for, or already have secured, planning grants to establish such courts in their jurisdictions.

Therapeutic jurisprudence proposes that the law itself can be seen to function as a kind of therapeutic agent. Legal rules, legal procedures, and the roles of system participants, such as lawyers and judges, constitute social forces that, like it or not, often produce therapeutic or anti-therapeutic consequences. This concept suggests that we be sensitive to those consequences and that we ask whether the law’s anti-therapeutic consequences can be reduced and its therapeutic consequences enhanced, without subordinating due process and other justice values.
David B. Wexler and Bruce Winick

Drug courts emphasize treatment as a potential strategy for breaking the cycle of recidivism so characteristic of substance abusers. Typically, drug courts divert defendants who are charged with, or plead guilty to, a drug-related offense to a court-monitored substance abuse treatment program. Evaluations conducted nationally suggest that the original goals for drug courts—reductions in recidivism and drug usage—are being achieved, with recidivism rates substantially reduced for graduates. Drug usage rates for defendants while they are participating in drug court, as measured by frequent, random urinalyses required by all participants, also are reported to be substantially reduced.

These are examples of the “therapeutic” consequences that proponents of this concept cite in advocating that justice system leaders begin to view their roles and responsibilities through a different lens. Other examples of therapeutic justice-based programs include mental health courts, which address the “revolving door syndrome” of misdemeanants who have mental illnesses; family courts; restorative justice programs, which promote the use of restitution agreements between offenders and crime victims; and even the handgun intervention program developed by the 36th District Court in Detroit. These types of programs are receiving widespread support in their respective communities and have garnered national attention for their innovativeness and effectiveness.

Interestingly, some have suggested that therapeutic justice programs are to the criminal justice system what alternative dispute resolution (ADR) programs, such as mediation, are to the civil justice arena. That is, rather than adjudicating cases by applying the law to the facts in an adversarial proceeding, both the therapeutic justice approach and ADR processes seek, respectively, to address the underlying causes for the commission of certain crimes or for certain disputes. They aim to “fix the problem” and not simply to decide the case.

As with the development of ADR programs, therapeutic justice initiatives appear to be striking a deep chord both within and outside the judicial system. The latter initiatives may present a stunning array of issues, challenges, and opportunities for the legal system and the courts as we enter the new millennium. Does the interest in therapeutic justice signal a desire for redefining the role of judges and courts? Does it indicate a move toward establishing additional specialized courts? How would an expansion of therapeutic justice programs by courts affect the long-standing policy differentiation between judicial and executive branches in which courts adjudicate cases and human service agencies of the executive branch provide treatment programs? What additional staffing resources or different types of professional expertise would be required within the judicial branch? Can long-term funding to support such initiatives be secured? Clearly, the answers to these questions will be key in shaping the mission, role, structure, and daily operation of the courts in the 21st century.

Adapting to a Global Environment and to the End of “Closed Systems”

The 1990s ushered in a new worldview, one that makes it possible that nationalism and ideological isolationism may be replaced by the era of globalization. In the aftermath of the fall of the Berlin Wall, the dissolution of the Soviet Union, and worldwide experimentation with democracy and capitalism, the desire for economic cooperation appears to have transcended the urge for militarism. This is due, in part, to the emerging influence and power of international business leaders in Europe, Asia, and the United States. Asia has rewritten the rulebook on economic trade and development. In this increasingly interconnected world, it is difficult to distinguish the United States economy from the world economy.

Globalization will continue to be a driving force as we enter the 21st century, stimulated by an increasingly mobile world population as well as the ever increasing power and presence of telecommunications. All of these factors produce a confluence of forces that have and will continue to shape a world of new orders, patterns, and behaviors. One such shift has been characterized as “the end of boundaries.” That is, where boundaries between peoples, nations, and systems once were clear and distinct, today they are collapsing, blending, or melding. Examples often mentioned in this respect include the old boundaries between the roles of men and women, blacks and whites, economic systems (the European Union as an example of merging systems), and separate, unconnected, automated systems. As old boundaries diminish or become obsolete, new alliances and partnerships between governments, businesses, and citizens emerge. The effects are seen not only at the national and international levels, but at the state and local levels as well.

A driving force in globalism is technology. Unparalleled access to information and its exchange through telecommunications has led to the coining of a related trend termed, “the end of closed systems.” Perhaps the most recognizable example of the new reality is the Internet. Within the past two decades, the Internet has evolved to become the premier global forum and the first global library. The Internet in and of itself is said to be propelling development of a global society, with people from all countries having access to the databases of governments, universities, and industries, through individual home computers.

With databases everywhere being opened and shared, institutions such as the courts are being urged, if not required by legislatures and other funding bodies, to develop integrated, open, and accessible information systems. Service delivery is being transformed by applications such as off-site access to court records and by innovations such as paying traffic and other fines and costs through ATMs. Consumer service demands, resource scarcity, the increasing competition for dollars, and technological innovations all will continue to provide powerful incentives for the development and implementation of open and shared databases.

As boundaries and systems have opened, there have been unmistakable repercussions for the workplace itself. The traditionally hierarchical organizational structure within courts

and elsewhere is out of step with current and projected changes in the workplaces of public and private sector organizations. In many instances, it is no longer necessary for workers to be located in a building, city, state, or country to successfully carry out their work. Thus, in order to attract and compete for the most skilled and qualified workers, judges and court officials must learn new management approaches and practices.

Opportunities for lawyers, court systems, criminal justice agencies, and others to exchange information, enhance communication with citizens, and conduct business in new ways are unlimited. However, the end of boundaries and closed systems may pose special challenges for the legal system and the courts, both in protecting citizens' legal and constitutional rights and in making the necessary organizational and philosophical shifts required in order to conduct business differently.

Already courts have dealt with and will continue to deal with cases stemming from the cyberspace experience, including copyright issues, electronic harassment, and pornography and censorship issues. In maintaining and sharing their databases in this new environment, courts must address data integrity and security concerns.

Thus, a question facing state judiciaries is how the courts can operate effectively in an increasingly global, "boundary-less" society. How can the courts seize opportunities presented by these changes in order to improve services to citizens? Among proposals surfacing thus far are:

- ♦ Developing the necessary mechanisms to establish a presence for the court system on the Internet by providing citizens, bar members, public officials, and court-related agency personnel the opportunity to access court information, as appropriate.
- ♦ Developing standards for the proper exchange of court information over the Internet or other automated means in order to ensure accuracy and protect privacy.
- ♦ Engaging with other court-related agencies at the local, state, and national levels in opportunities to exchange information and share criminal and civil data in the most cost effective means possible.
- ♦ Determining possible options for remote work (e.g., telecommuting) where such a move would be cost effective and would not interrupt service.
- ♦ Preparing for new and modified types of cases involving multistate and transnational situations stimulated by the Internet and the emerging global marketplace.

Privatizing Justice

One of the most stunning developments within the past twenty years has been the demise of public and private “monopolies.” From Ma Bell to prisons, competition, privatizing, and outsourcing services have been introduced to many business and governmental functions in every sphere. Aided to a large extent at the national level by conservative think tanks and Republican members of Congress who want to downsize government, the privatization movement, in particular, has focused intensively on the public sector within the past few years. Interestingly, not even the judiciary has been exempted from the “privatization” debate. In the mid-1980s, then Congressman Newt Gingrich introduced legislation to privatize the courts.

“Rent-a-judge” companies and law firms devoted to mediation practices exist in most states. Private corporations, in particular, appear increasingly to favor the use of private judges as an alternative to going to court. Among the reasons cited are the abilities to: (1) conduct proceedings privately, (2) resolve disputes far more expeditiously, (3) reduce legal costs, and (4) select “judges” who possess specific expertise in deciding cases involving complex business issues. Further, there is a feeling in some business quarters that an adversarial process is not the preferred or appropriate process for handling certain types of business disputes. Thus, courts, like other public institutions, increasingly will exist in a competitive environment, at least in the civil law arena.

Among those most interested in the “rent-a-judge” movement are sitting judges, including those, for example, in Virginia. Some judges perceive that such systems might offer more flexibility and control of their careers, less demanding caseloads, and better benefits than court systems can provide.

In addition, there have been many dramatic changes in Virginia during the past five years (1994–1999) with the growth of court-appointed mediation programs. As a result of the efforts of many people and organizations, litigants in numerous parts of the state have had access to mediation services. These services have been made possible by mediators and mediation centers contracted by the courts to provide low-cost services to the courts.

The “consumer movement,” which emerged simultaneously with these forces as a sort of revolt by citizens, has given rise to mistrust of government and of slow, cumbersome, bureaucratic processes. In response, politicians and legislators at all levels have criticized bloated bureaucracies and waste in government. Public officials have responded with programs to “reinvent government.” Combining technological solutions with new management approaches has often led to downsizing, or “flattening” the organizational structure, establishing team management in place of hierarchy, and focusing on how consumers want services to be provided. The latter, generally, has translated into the need to have such services in place the first time citizens attempt to access them and for services to be delivered faster, more competently, and more courteously.

Reverberations for the courts thus far include greater scrutiny of all court system operations, the call for high quality, courteous service to be delivered to citizens with alacrity, and the need to successfully incorporate ADR mechanisms in the courts. In both the consumer research conducted with Virginia citizens and the issues survey conducted with Virginia judges and court personnel, the desire for alternatives to traditional court adjudication surfaced among the top priorities cited by participants. Perhaps the major issues in further development and use of such services are increasing awareness among litigants of the options that exist for such services, providing funding for ADR programs and contracts, and continuing training for judges, bar members, and others in the potential uses and benefits of mediation and other alternatives for resolving disputes.

As with other trends, there are both short- and long-term questions presented here for the courts. The judicial system is the governmental and societal institution for resolving disputes; thus, a central question for the courts is, "What issues will the courts be responding to in an era of increasing competition, privatization, and outsourcing for services?" Among suggestions made in this regard thus far are the following:

- ♦ Conducting efforts to "reengineer" the basic ways in which courts conduct business with the public.
- ♦ Providing funding for the expansion of ADR contracts with mediators throughout the state.
- ♦ Using automated systems and other technologies to enhance the means through which citizens, bar members, businesses, court-related agencies and officials, and others can have convenient access to court data, as appropriate, for multiple uses, including filing and transmittal of cases and legal documents.
- ♦ Determining ways to reduce legal fees.
- ♦ Developing a "service culture" within the court system.
- ♦ Providing training to judges and court officers on "team-based" management approaches and techniques.

Vision, Visionary Leadership, and Changing "Value Added"

Fundamental questions always exist about the direction of society or its particular segments, such as law and justice. Presently, there is an ongoing trend in a wide range of fields toward more "vision" or "visionary direction." For example, there are a variety of quality revolutions going on in the United States and throughout the world. They initially focused on achieving perfect, "zero defect," or nearly perfect quality in manufacturing or production processes. Now, service organizations are embracing quality in similar ways, as

is health care, where there are quality revolutions and counter-revolutions—ensuring quality and then retreating to a focus on cost. Over time, the quality of health care is improving. As the quality improves so does the focus. Health, in terms of what we think is good or an appropriate target, is “getting better.” In fact, the good that we seek from health care is moving from treating the symptoms of illness effectively to ensuring, through prevention and other means, that preventable illness does not occur at all. And the focus of health outcomes is shifting—not only does it focus on individuals but on communities as well.

Figure 1: Vision and Value Added

<div style="border: 1px solid black; padding: 10px; text-align: center;"> Vision and Value Added: Trends Across Sectors </div>						
Value Added	Journalism	Corporate Activities	Electronic Messaging	Quality	Health Care	Military Medicine
↑	<u>Civic Journalism</u>	<u>Visioning, Co-creation</u>	<u>Wisdom, Co-creation Vision</u>		<u>Syndrome Community Prevention, Health</u>	<u>Anti-War, Health/Sustainability</u>
	accurate information delivery	community services, collaboration	knowledge	strategies		personal fitness
			information		disease prevention	war
	sensationalism	profits efficiency operations	data	operations	disease treatment	disease

Source: Institute for Alternative Futures, 1996

The movement toward vision and higher “value-added” outcomes has been observed in other industries and sectors as well. In the process, the focus of quality is changing, moving “up the value-added ladder” from tactics of production to strategy, and ultimately, to vision. In other words, quality, particularly when it is successful in systematizing the goodness of “how” we make or do things and ensuring that we are doing them in the “right way,” is moving from aiding us in ensuring that we are doing things the right way to ensuring that we are doing the “right things” (Dighe 1996: 93). As Figure 1 illustrates, the fields of journalism, corporate activities, electronic messaging, quality, health care, and military

medicine are all “moving up the value-added ladder.” In terms of the courts, will the trend mentioned towards therapeutic justice lead to the question of additional roles for the courts in preventing violence? In 2010 or 2020, what will we have come to expect the courts and related justice services to provide? To the extent that this trend grows, and/or that courts choose to provide more visionary leadership, judicial personnel will need enhanced leadership and other skills to move into the future more effectively.

Breakdown/Breakthrough of Systems

State governments spend great effort on three key systems: “education,” “health,” and “justice,” each of which is experiencing great turbulence. Each system has seen decades of dramatic, and usually unaccountable, growth in the states. Thus, these systems are challenged in a variety of ways, to the extent that in some states the health, legal, or education system is on the verge of a breakdown. Yet, in each case there are prospects for dramatic increases in the efficiency, effectiveness, and equity with which they operate. Take health care for example. The United States spends about 14% of its GDP for a health care system that still leaves roughly 43 million people without consistent access to health coverage. Virtually all developed countries cover all of their population, generate higher health outcomes than the United States health system does, and accomplish this at 6 to 10% of their nation’s GDP (IAF 1998). The nations of Europe achieve better population health outcomes at two-thirds (or less) the cost. Education and justice systems, both of which have grown rapidly without outcomes-focused accountability, face similar prospects for either breakdown or breakthrough. The courts are likely to see continued cases from breakdowns, even as public demands for efficiency and effectiveness, and visionary court leadership, combine to provide the prospect for significant “reinvention” in the achievement of justice.³

By 2020, we could have health systems that generate health (more than the treatment of disease), education systems that generate meaningful learning (cognitive, affective, and citizenship enabling), and justice systems that generate justice (preventive and therapeutic). A likely forecast is that we will have some breakdowns and some breakthroughs.

Macrotrends: The Environment and Food

Over the next 10 to 20 years there are a host of environmental problems that are likely to persist, including global warming (with attendant movement of virulent diseases and disease-fostering local climate conditions and more variable and severe weather conditions) and challenges to water and food production (as population grows and arable land shrinks). Environmental toxins are also growing more pervasive. Some argue that exposure to these, particularly the endocrine disruptors thought to be responsible for low sperm rates and genital malformations, will instigate the next “civil rights movement.”⁴ These are likely to put demands on the courts.

Subtler will be the question of justice regarding fair use of resources. While it is distant from most Americans' consciousness, if global warming continues to accelerate, and if food and water problems grow, questions of global fairness and global justice will increase. As noted above, we are facing an end to certain boundaries in the global marketplace and information bazaar. Just as water rationing and restrictions occur in drought-suffering communities, so might larger concerns for resource use arise.

Trends and the Future of the Courts

Trends create an opportunity to learn, to challenge one's thinking, and to look for "early warnings" of threats and opportunities. As noted, the Virginia Supreme Court has used many of these trends to explore the future and to enhance their strategic planning. Consider your opinion about any one of these—does it go far enough or too far in considering change?

Assuming that some of these, such as Internet voting or "cyberjuries," are likely to become issues affecting our courts: How should we prepare for Internet voting? For cyberjuries, will these allow jurors to be in multiple locations? Will human jury members even be replaced by "electronic agents?" Will we ever see our "peers," for jury duty in electronic form? Again, should courts anticipate the opportunities to use telepresence and expert agents or should courts wait until they have been effectively applied in other sectors? What is the appropriate role of the courts, if any, besides waiting until the appropriate cases and controversies are brought before it?

Ideally, these trends and others we consider should enable our courts to more effectively create the future we prefer, including better judging the timing for court initiatives.

CHAPTER TWO

Futures Tools and the Courts: Better Understanding, Choosing, and Creating the Future¹

*Clement Bezold*²

Introduction

Futures work involves a variety of tools that are aimed principally at better understanding what the future might be (the plausible future) and better choosing and creating the future we prefer (the preferred future). Futures tools include some that help us better understand what might happen (trends, forecasts, and scenarios) and others that help us better choose and create the desired future (vision, audacious goals, and strategies).



Futures Work in Judiciaries

The work of the courts, like all organizations, involves considering what might happen and creating the future. However, like most governmental organizations, the courts' understanding of the future is often not very systematic. The future envisioned by the courts is typically modest adjustments to the present—like driving into the future by focusing on the rearview mirror.

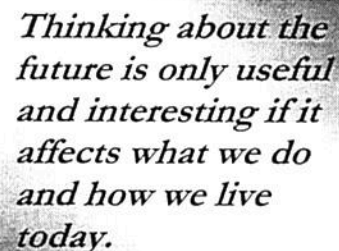
Yet, over the last two decades there have been significant efforts in courts to deploy various futures tools. In May of 1990, the Future and the Courts Conference was held in San Antonio, Texas, sponsored by the American Judicature Society under a grant from the State Justice Institute (SJI). Jim Dator and Sharon Rodgers coauthored a book based on the conference titled, *Alternative Futures for the State Courts of 2020* (1991). Again with SJI funding, the Institute for Alternative Futures (IAF), Hawaii Research Center for Futures Research, and the National Center for State Courts embarked on a national futuring effort, in parallel with and through additional funding from SJI directly to state courts, to develop their own visions. Materials from these efforts include a guidebook and video.³ A majority of the state courts has done some type of futures program, and the Federal Judicial Center and various federal judicial circuits have also done some type of futures work. Both the

American Bar Association and the American Judicature Society have written reports on court futures efforts.

Hawaii provides an example of futures work in a state court. In the 1980s, the Hawaii Judiciary, lead by Chief Justice William Richardson and Court Administrator Lester Cingcaide, engaged Jim Dator to work with them to have the courts look ahead. This effort took many forms, including training for judges and staff, and the deployment of a staff person to conduct environmental scanning. Over a decade, this program included the first court-employed, full-time futurist/trend monitor, Sohail Inayatullah, on the court staff.⁴ This service provided the Hawaii courts with early warning of many things that subsequently occurred. Concepts that the Hawaii courts considered, long before they became reality, included “the rights of robots” and the “holographic courthouse.”

On Futures Thinking and Futures Tools

What does “futures” activity, such as that done by the courts over the last two decades, seek to accomplish? Let’s consider the nature of futures tools and how they are relevant. Good futures work is, to some extent, concerned with forecasting the future, but more importantly, it is concerned with thinking about the future and helping people who are not futurists to think and act more wisely about the future.



Thinking about the future is only useful and interesting if it affects what we do and how we live today.

James Robertson

Futurists study and assist others to explore ideas about the future, most often believing the future is “plastic” and can be shaped. Indeed, the belief that the future will be shaped by human decisions and actions is one of the characteristics that leads to the use of futures tools. The immediate future (one to five years from now) will be shaped largely by decisions previously taken (recognizing, of course, that “discontinuities” such as the 1973 oil shock or the 1989 fall of the Berlin Wall can dramatically and swiftly alter the course of events).

If futures work is to help in creating a future that we find desirable, it must enhance the ability of individuals and organizations to create the future they want. At its best, futurism—to use the phrase coined by Alvin Toffler—is a form of “anticipatory democracy,” helping people and organizations to decide what kind of future they want and how they might achieve it (Bezold 1978: 11–22). Understanding the *plausible* future is important, but only in the context of choosing and creating *better* futures.

Assessing the Likely Future vs. Creating the Preferred Future

There is often a marked difference between the future we think is likely to happen and the one we would prefer to have happen. It is important to stress the value of examining both the probable and the preferred futures, a process that can be liberating. Too often our image of the future is what we think will most likely happen; this can produce an awful sense that the light at the end of the tunnel is an oncoming train. The probable future is something that seems to be done *to* us, over which we have little or no control, and that we will likely dislike. If futures work focuses too much upon the probable (as it has a tendency to do since we all like to know what to plan for), it runs the risk, perhaps inadvertently, of disempowering us and denying choice. If we are told, "this is the probable future," the only choice we have is to prepare and brace ourselves for it.

The preferred future, on the other hand, is a liberating and empowering one, especially when it touches our more creative capacities. It not only enables us but encourages us to say, "this is the future that we want" (with the emphasis on "we," since it is usually organizations and communities that build societal futures). The energy and creativity released in a "preferable futures" process can be quite astonishing. Vision in this context also makes it more difficult to maintain unjustifiable self interest in the face of shared aspirations. In many of the state court vision efforts, it became harder for trial lawyers to overcome the shared aspirations of vision participants for a less adversarial and more effective judicial process.

*The best way to predict
the future is to invent it.*

Alan Kay

Two Fundamental Assumptions About the Future

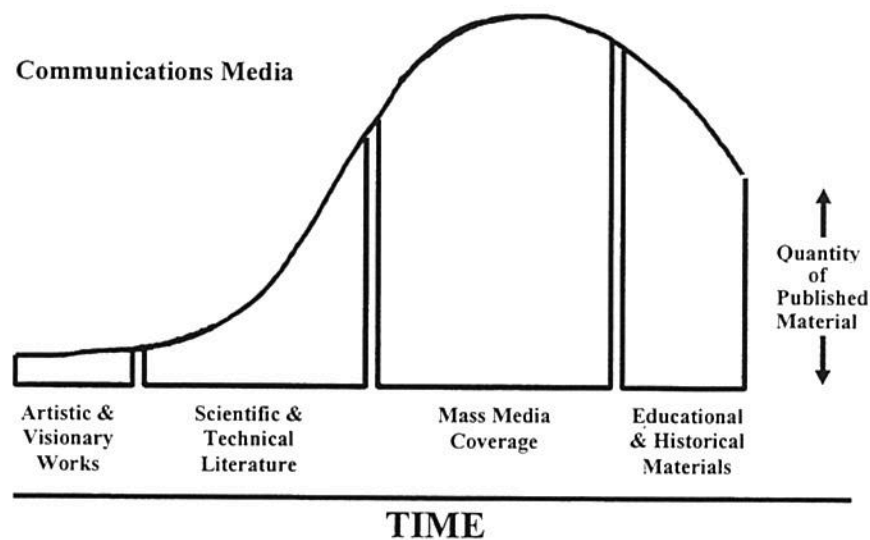
Consistent with the previous comments, we make two fundamental assumptions about the future. First, the future is uncertain. There is no single, certain forecast for the future. While we (and the organizations for which we work) would like to eliminate this uncertainty, we must be able to live with it effectively and creatively. Understanding key trends and alternative futures for the justice system, for the courts, and for our communities can enhance our effectiveness and creativity.

Second, we create major aspects of the future by what we do or fail to do. While the future is uncertain, and much of it beyond our control, there are large aspects of the future that we can control. Visions, goals, and strategies linked to a clear sense of trends, forecasts, and scenarios make us better equipped to shape the future we prefer.

Futures Tools: Trends, Forecasts, Scenarios, Vision, Audacious Goals, and Strategies

Futures tools support wiser action; they work by stimulating the imagination, encouraging creativity, identifying threats and opportunities, and allowing us to relate possible future choices and consequences to our values. Successful futures work involves the integration of the following elements: trends and forecasts, scenarios, vision, audacious goals, and strategies. The first three develop plausible forecasts; they explore what might happen. Visions clarify what we want to create—the preferred future. Audacious goals and strategies include the wide range of planning and action-related activities that link plausible and preferred futures to action.

Figure 1: Emergence of an Issue



Trends and Forecasts

A trend is a pattern of change over time in a matter of importance for the observer. Trends typically focus on discrete topics such as violence in society, economic well-being, and caseload. It is important to understand how trends evolve and how to spot one in its early stages. As trends grow in visibility and importance, they often become “issues”—changes or problems that we take action on (see Figure 1). In this context, an issue is simply a trend to which greater attention is given and (in most cases) on which action is taken.

Once an issue has emerged, it is easier to observe by scanning the mass media. However, many trends can be spotted years in advance in trade or scientific media. And even before that, artistic or visionary thinkers will explore ideas or forces that will make up the trend. Thus, in the early 1960s, pollution was seldom thought to be a serious problem in the United States, and environmental concerns in general were relatively low. However, Rachel Carson had a different perception of the trends in environmental conditions, and her book, *Silent Spring* (1962),⁵ contributed substantially to changing public perceptions. Today the environment is a dominant public policy issue.

Trends can be searched for at various stages of development. The earlier a trend can be detected, the greater flexibility an organization has to respond to it. Some organizations, and most governments, wait until trends become issues, and sometimes for the issue to reach crisis proportions, before taking action. When a trend is at a crisis stage and is attracting significant media attention (the top of Figure 1), the decision costs for politicians are usually lowered, but the range of options is narrowed.

Trends in the courts likewise emerge over time. Legislatures and other policy making bodies often fail to anticipate trends, allowing them to become issues, often expensive issues, before acting. Likewise, much of the work of courts involves providing judicial remedies to issues that have not been resolved elsewhere.

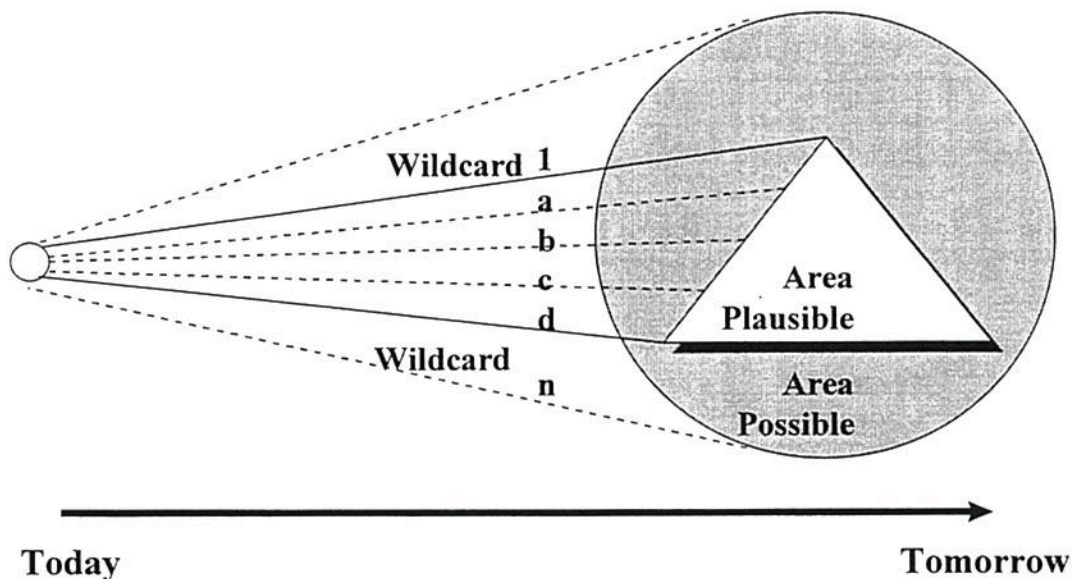
Trends focus on change in certain specific topics over time (e.g., caseloads, types of cases, and numbers of judicial personnel), while forecasts are a conscious way to predict where a trend is going. In the area of the courts, consider, for example, information technology. How will the Internet, expert systems, and other advances affect the work of the courts? It is also important to consider the impact these advances may have and the design options they allow. For example, how expert systems develop and are applied will make a difference in when “virtual justice” or the “holographic courthouse” begin to take shape. Whether these changes are desirable and, if so, in what form, is an issue of choice. Forecasts are essential to explore how these could be developed to best achieve the courts’ goals.

Scenarios

Trends and forecasts identify what might happen with a large degree of uncertainty, making scenarios an important tool for narrowing that uncertainty. Scenarios map future space, as shown by Figure 2, which indicates what is more or less possible. The small circle on the left depicts the present, while the zone defined by the larger circle on the right is the zone of possibilities. Plausible futures are

represented by the narrower zone (the triangle). The inner part of the cone delineates the range of plausible paths the future might take (labeled a, b, c, and d). The preferable future, or vision, is usually—but not necessarily—within the plausible zone. There is a wider portion of the circle surrounding the plausible zone, the area of all possible futures, which is driven by a variety of “wildcards.” Wildcards are typically low-probability, high-impact events, such as the fall of the Berlin Wall or the transformation of the Soviet Union, that remind us that dramatic, seemingly implausible change (in the short term) can occur very swiftly. We need to be flexible and have a sense of what type of wildcards might arise, but focus our planning efforts on the triangle defined by more plausible futures. The “futures cone” in Figure 2 makes clear that all these futures start from where we are today, then diverge. The closer we are to today, the harder it is to tell them apart, but clearly, choices made now can have dramatic effects over time.

Figure 2: Scenarios: Focus on Plausible Futures



Scenarios are a powerful tool that allows us to consider how interacting sets of trends might lead to a range of conditions in the future. They are compilations of trends and forecasts into differing images of the future that allow us to consider a broad range of possibilities. As the cone in Figure 2 indicates, scenarios “bound the uncertainty” of the future. They define what is plausible, what is less likely but still plausible, and what could make a significant change though highly unlikely.

Scenarios can be developed in a variety of ways and in varying degrees of detail. A set of scenarios should be both plausible and challenging and provide an opportunity to learn both about the future and our current thinking, including the assumptions and paradigms to which we have become blind.

The use of scenarios has grown significantly in corporate, government, and community planning, particularly in North and South America and in Europe. As noted, several state court systems have developed scenarios, either as part of their vision activities or separately. Futures work of this type enables individuals and organizations to find or enhance the leadership necessary to move in desired directions.

At IAF, we most often use a set of “archetypes”. These include a “best guess” extrapolation of current trends—the “official” or “business as usual” future. By asking ourselves what could go wrong for courts, the justice system, or any other issue, we develop a “hard times” scenario. In addition, we most often develop two additional, “structurally different” scenarios that challenge current thinking at multiple levels. Increasingly, we use these “structurally different” scenarios to portray more visionary possibilities.

Scenarios allow for systematic consideration of how key elements will evolve across them. Figure 3 presents the titles from a set of scenarios and illustrates how elements, such as technology, can be compared across the scenarios. The top matrix illustrates elements in the “macroenvironment.” The lower matrix illustrates elements in the operating environment of the courts.

Scenarios also invite us to think about the relative likelihood and desirability of a particular future. IAF has been polling audiences throughout North America and Europe on the likelihood and preference of scenarios in specific sets since the early 1980s. An interesting paradox emerges: the scenarios thought to be most likely turn out to be far less preferred than more visionary ones. Yet, organizations generally focus their planning on reacting to the supposedly more likely futures, in turn reinforcing them and preventing more desirable ones from occurring. In effect, by focusing too much on the environment and not enough on a creative vision, organizations, including courts, can create “suboptimal futures.”

Scenarios deal with plausible futures. They make us smarter and more informed. Yet, futures should also be used to lead to wiser action. Action is often strongest when it comes from our deep commitments—from our hearts. Visions link scenarios and action, as the following discussion demonstrates.

Figure 3: Alternative Scenarios

Macroscenarios: United States

Scenarios Elements				
	A. Continued Growth	B. Things Bog Down	C. Controlled Society	D. Third Wave
Demographics and Values				
Technology				
Economy				
Ecology				
Politics				

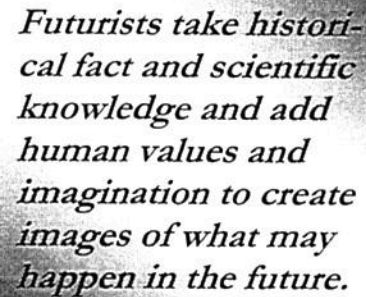
Court Scenarios

Scenarios Sample Elements				
	Scenario A	Scenario B	Scenario C	Scenario D
Demand for Justice Service				
Drug-related Issues in Court				
ADR Status				
State Justice Financing				
Technology				

Source: *Reinventing Courts for the 21st Century—Designing a Vision Process*

Vision

A vision is a statement of our values moved into the future we want to create. It is a compelling, inspiring statement of the preferred future that the authors and those who subscribe to the vision are committed to creating. The critical dimension of a vision is not the statement itself, but the commitment and behavior the vision draws out of those pursuing it. Scenarios are “futures for the head.” They provide intelligence, identifying threats and opportunities and stretching our imagination. Visions are “futures for the heart.” They touch and move us.



Futurists take historical fact and scientific knowledge and add human values and imagination to create images of what may happen in the future.

Edward Cornish

Visioning in the Public Sector and the Courts: David Osborne and Ted Gaebler, in their book, *Reinventing Government* (1993), make the point that in virtually all the cases they examined where governments have dramatically increased their efficiency a shared vision has played an important role. In the 1980s, the process of visionary leadership increasingly became something to share throughout organizations and communities. As previously noted, there has been a series of futures commissions and other futures efforts in state courts.

Our experience of doing futures work for communities and organizations, including the courts, points to the need for a combination of factors, including sustained leadership, appropriate placement in the decision cycles of the organization, the ability to continue on portions of the effort after the initial round, and effective involvement of key stakeholders (for a public/community effort a significant portion of the public). While it is difficult to align these various factors, it can be done. For example, *Alternatives for Washington* in Washington State in 1973 and 1974 showed this to be the case 25 years ago (Bezold: 88–99).

Visioning in the Private Sector: The growth of visioning has been significant in the private sector as well. The importance of visioning has been noted in the most respected literature on leadership and strategy for large corporations since the early 1980s. For example, Tom Peters and Robert Waterman, in their research on excellent companies, found that companies with a strategic vision that was authentically communicated to their employees could tap a higher level of productivity from employees because it touched their hearts (Peters 1982). In *The Renewal Factor* (1987), Waterman argues that, “one of the most difficult challenges in management is developing

a sense of value and vision.” This is done “by finding a way to give the organization a sense of pride” (p. 222).

In *The Leader's Edge* (1989), Burt Nanus argues that the vision “should provide a shock of recognition that has the power and intensity to command attention, evoking resonating images in the receiver.” Nanus argues that leaders should:

[T]ry to make the vision relate to something familiar in the organizational culture. Be sure that it is credible and easily understood, optimistic and ennobling. Remind people of the tough things that need doing and the reasons for them. Elevate their aspiration. Show them a brighter, more successful future for themselves if the organization achieves its vision. In the end, your vision must provide the spark that ignites their energies and empowers them to move forward together with you toward a shared purpose. (Nanus 1989: 106–7)

Likewise, Rosabeth Moss Kanter, in her book *The Change Masters* (1983), argues that “great companies make meaning,” but this requires inspiring change, which can be difficult. “Most of the rational analytical tools (used by organizations) measure what already is But change efforts have to mobilize people around what is not yet experienced.” Kanter goes on to talk about the environment necessary for change:

Change masters are—literally—the right people in the right place at the right time. The right people are the ones with the ideas that move beyond the organization's established practice, ideas they can form into visions. The right places are the integrative environments that support innovation and encourage the building of coalitions and teams to support and implement visions. The right times are those moments in the flow of organizational history when it is possible to reconstruct reality on the basis of accumulated innovations to shape a more productive and successful future.

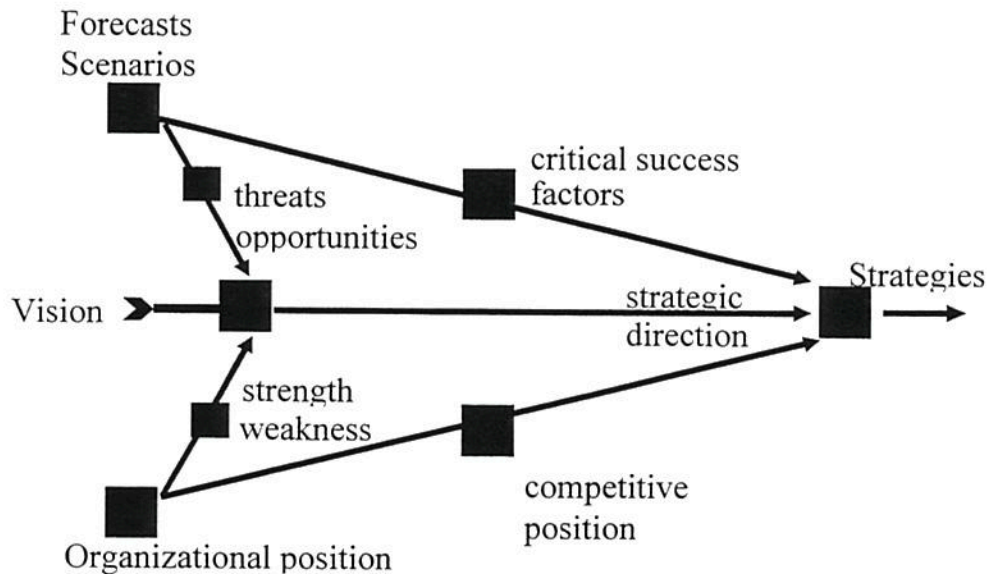
The concepts and visions that drive change must be both inspiring and realistic, based on an assessment of that particular corporation's strengths and traditions All companies can create more of the internal conditions that empower people to carry out the search for those appropriate innovations. And in that search might lie the hope of the American economic future. (p. 306)

Peter Senge, author of *The Fifth Discipline* (1990), argues that no organization becomes great without goals, values, and missions that are shared through the organization:

A “vision statement” or the leader’s charisma is not enough. A genuine vision breeds excellence and learning because people in the organization want to pursue these goals. “What do we want to create?” The answer to that question is the vision you and your people come together to build and share. Unlike the concept of vision that’s bandied about these days—the “vision” that emanates from one person or a small group and is imposed on the corporation artificially—shared visions create a commonality that gives a sense of purpose and coherence to all the activities the organization carries out. Few forces in life and the business world are as powerful as shared vision.

Shared vision is vital for learning organizations that want to provide focus and energy for their employees. People learn best when they strive to accomplish things that matter to them. The overarching goal that the vision establishes brings about not just commitment but new ways of thinking and acting. It fosters risk-taking and experimenting. It also encourages a commitment to the long term. (p. 206)

James Collins and Jerry Porras of the Harvard Business School argue that this commitment to vision is not new. In fact, the most successful companies in the United States economy are those that have linked their values, mission, vision, and actions effectively. They have significantly outperformed other successful companies over the last 75 years. Collins and Porras, in their book, *Built to Last: Successful Habits of Visionary Companies* (1983), note that these companies persist in pursuing their core values beyond and more important than making a profit. Elsewhere, Collins argues that, “there is no reason you can’t be one of the most successful organizations in the world and one of the most altruistic. There is no inconsistency between these.”⁶

Figure 4: The Role of Vision

Audacious Goals

Collins and Porras have gone a step further. Based on their review of successful, visionary companies, they identified an additional stage of developing visionary goals: once an organization has established its vision and decided upon its mission, the next step is to formulate audacious goals. Collins and Porras called them BHAG—“Big, Hairy, Audacious Goals.” BHAGs are statements that express the desired outcome for the future in a clear and compelling manner. In so doing, they affirm commitment to a huge, daunting challenge. In order to achieve the highest aspirations in its field, an organization must consider and develop robust strategies that take advantage of potential new opportunities and address possible obstacles as well. These “stretch goals” serve as rallying points around which new strategies can take form. While exploring the future and determining what strategies are consistent with its identity, members of a larger body can engage in this process of identifying and pursuing audacious goals, which also act as a catalyst for team spirit Collins 1996: 65–77).

Strategies and Strategic Planning

Vision is influenced by the threats and opportunities of the external environment (the top half of Figure 4) best summarized in scenarios. Vision is guided by external threats and opportunities, factors internal to the organization or the

community (i.e., its strengths and weaknesses) and by its competitive position (the lower half of Figure 4). Vision leads to strategic planning, which often includes a *SWOT* analysis, the *strengths* and *weaknesses* of the organization and the *opportunities* and *threats* posed by the external environment.

The strategies themselves are high-level, integrated sets of actions we will take to achieve our vision and audacious goals in light of the present and future environments the organization faces. Figure 4 identifies the relationship among scenarios, vision, and strategies. Most organizations fall short of being strategic, and many organizations that develop strategies fail to link them to their deeper values and ensure that they are driving them toward their vision.

A key lesson that has emerged from private sector work is the difference between strategic plans and visions. Both are important for moving forward, but they are not the same. One expert has developed a useful comparison of the two (Doyle 1990: 29–33).

Strategic Plans

- ♦ Directional
- ♦ Linear
- ♦ Reaction to trends and competition
- ♦ Work forward to the future
- ♦ Have to know how to get there
- ♦ Completed plan
- ♦ Plan language:
 - cool
 - rational
 - mind-focused
 - bureaucratic
- ♦ Secret

Visions

- ♦ End-state oriented
- ♦ Holistic view/a snapshot
- ♦ Desire to create in the world
- ♦ Work backward from the future
- ♦ Unclear how to get there
- ♦ Dynamically incomplete
- ♦ Vision language:
 - hot
 - heart/spirit
 - intuitive
 - poetic
- ♦ Public

At the October 1999 National Symposium on the Future of Judicial Branch Education in St. Louis, Missouri, teams from the state courts will be working to explore their shared vision for judicial branch education. What can judicial branch education contribute, and what strategies can be used to enhance its contribution in the years ahead?

Conclusion

Futures work involves the use of tools such as trends, scenarios, vision, audacious goals, and strategies to understand the threats and opportunities of the environment, to clarify and creatively identify the best that can be created, and to assess the approaches for moving forward. As judicial organizations face the mounting pressure of change, futures tools can help us to understand what is emerging and, more importantly, can steer our organizations in the direction we want to create. Courts can use futures tools to ensure their contribution and effectiveness matches both their constitutional assignments and their shared visions.

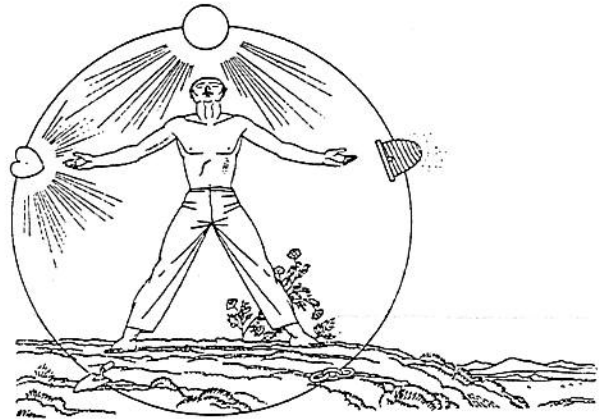
CHAPTER THREE

Creating the Future: Seeing, Knowing, and Doing in New Ways

Maureen E. Conner¹

The future is not something that happens to us. Rather, we create it. Every day we think and act. Through our thinking and acting we not only live the moment but also create the future. What are we creating?

To answer that question, we must become conscious. We are often seduced by the routine of our day-to-day lives, so much so that we arrive at work not even knowing how we got there. We greet people and five minutes later we don't even remember their names. The seduction is so complete that we forget that what we do moment by moment is creating our next hour, day, year, and life. Understanding the process of creating will enable us both to live fully in each moment and to create a desirable future.



This chapter is dedicated to acquainting us with the creative process through examining the nine stages of bringing an idea from its origins to its completion. It will also identify the likely impediments that we will experience as we create. Last, this chapter will challenge us to think and do “outside of the box” by approaching our lives the way Leonardo da Vinci approached his—open to the universe of possibilities that await us.

This chapter has two parts. The first, as was just described, is intended to inform and challenge. It intentionally contains very few comments about creating a new future for the courts in the hope that we will understand the flow and dynamics of creating before we judge what will and will not work.

The last part contains two workbooks. The first one invites us to apply the creative process to building the courts of the new millennium. The second workbook asks us to uncover all of the perceptual, emotional, cultural, environmental, intellectual, and expressive blocks that will likely emerge while we create courts that honor the past, live in the present, and lead the future. These workbooks are intended to prepare us to participate in the

symposium as individuals and as members of a team charged with improving judicial branch education in our states after the symposium. It is the sponsors' hope that, by taking the time to reflect on the questions posed in the workbook, we will be better prepared to participate in the futuring exercises at the conference.

By using both parts of this chapter, we will understand the fundamental work that is involved in activities like futuring, visioning, and projecting trends. Perhaps more importantly, we will also increase our comfort with a process that is, at the very least, complicated and, at worst, downright confounding.

The Process of Creating

Creating is different from problem solving, critical thinking, creative thinking, or other processes of addressing issues and concerns in our lives. Creating is unique because it is not responding to something we don't want but bringing into existence something that never was. Creating is what brought us computers, paintings, space travel, robotics, and so on.

Creating is not about being a creative person. It is about setting an intention to get results. The creative process is experienced differently by all those who are involved.

The creative process is both predictable and unpredictable. It is both composition and improvisation. There is a balance of the intuitive and the rational. There is an ever-increasing process of learning, and adjusting your actions based on your learning. Each creator has his or her own personal rhythms. The process is individually developed and personally tailored to take into account such variables as temperament, personality, idiosyncrasies, strengths, weaknesses, tastes, aspirations, and interests. (Fritz 1991: 8)

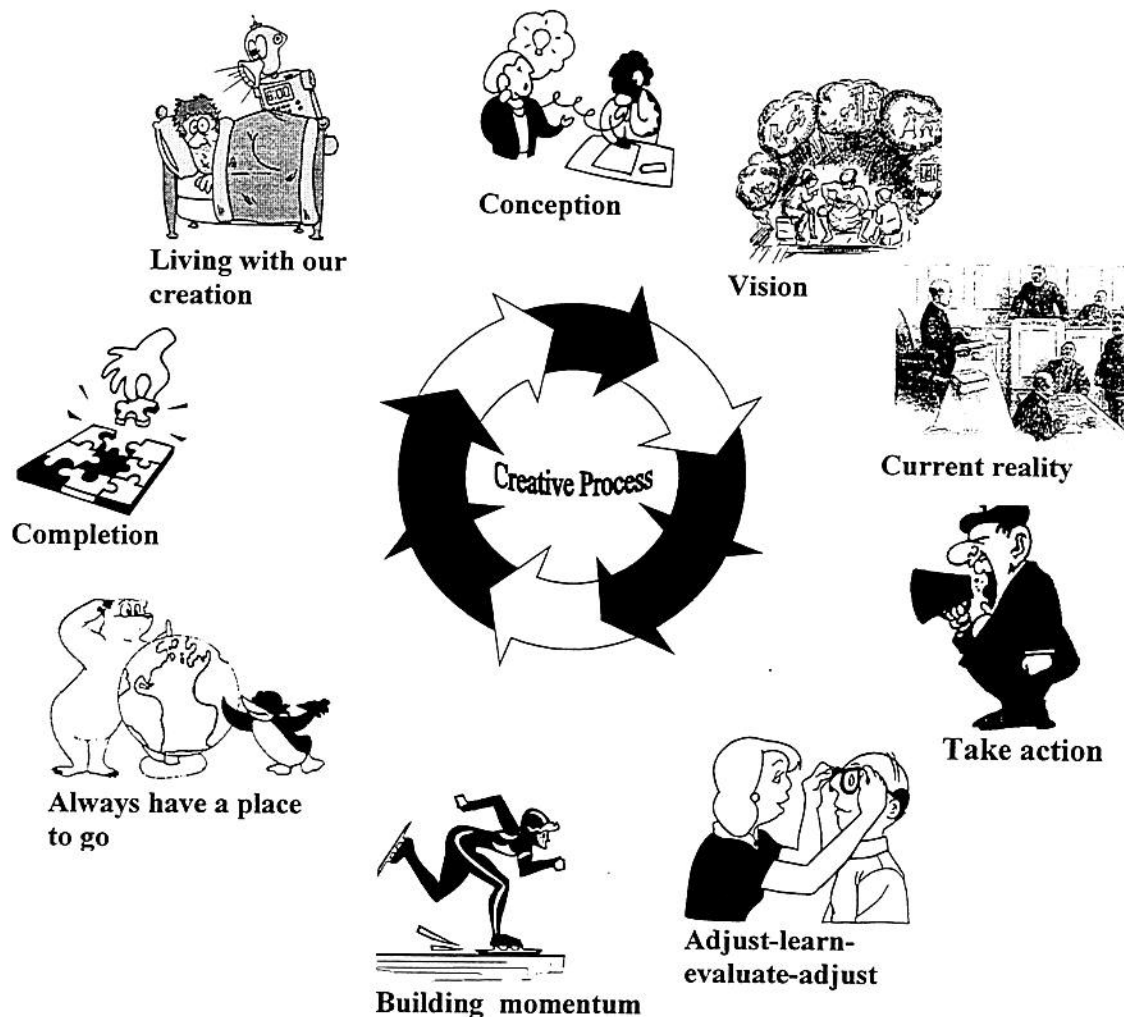
Nor is it just an individual activity; creating can also be a group process. When creating with others, all of the aspects of the process are magnified and multiplied due to the additional creators involved.

Whether we create by ourselves or in a group, there must be a passion, a love, and a commitment to that which we wish to create. The emotion involved in creating is for something that exists in the imagination. Passion, love, and commitment comprise the set of emotions that encourages and sustains us during both the easy and challenging times.

Robert Fritz, in his book, *Creating* (1991), sets out nine stages that are common in the creative process. They are conception, vision, current reality, take action, adjust-learn-evaluate-adjust, building momentum, always have a place to go, completion, and living with our creation. Discussing these stages will bring to our awareness the thoughts and actions

involved in creating the future of the courts of the new millennium. In one form or another, all of us will go through these nine stages as we immerse ourselves in developing one or more future visions and outcomes for the courts and judicial branch education.

The Nine Stages of the Creative Process



Stage 1: Conception

In this first stage, we begin to consider what to create. It may start with an idea, a hunch, a feeling, or a comment by someone else. In the conception stage, we assume some of the qualities that characterize the desired end result. It is a way of

consciously or unconsciously experimenting with the idea. While we are experimenting with the idea, we are also judging whether the idea has merit. This is a natural and necessary activity. The question is whether or not this creation should go forward. If the answer is no, then there is no reason to go on. This seems obvious, but it is often overlooked. When the obvious is overlooked, untold amounts of time, money, energy, and goodwill are wasted on something that should have never come to fruition. During conception we are experimenting with ideas. We have not yet formed the end result. Instead, many end results are given a trial run. It is during the trial run that the ultimate outcome becomes clear (Fritz 1991: 21–25).

Stage 2: Vision

In this stage, we move from having general notions or ideas about our creation to identifying specifics about the outcome. This is the stage when we, as the creators, settle on one end result. We may not have all of the details of the outcome worked out, but we know enough about them that we would recognize the outcome if we saw it. Vision is the result of playing with many different impressions, ideas, thoughts, and things (Fritz 1991: 25–26).

Vision is the best manifestation of creative imagination and the primary motivation of human action. It's the ability to see beyond our present reality, to create, to invent what does not yet exist, to become what we not yet are. It gives us the capacity to live out of our imagination instead of our memory. Stephen Covey

Stage 3: Current reality

Current reality is the understanding and knowledge of the state of things. This understanding and knowledge stays in the center of our awareness throughout the creative process, because we must always be aware of where we are in comparison to our vision. This difference creates a tension that begs to be resolved, one that is fundamental to the creative process. It is our job to form and resolve it by fully and accurately describing our current reality and comparing it to our vision. The creator must always remember that it is the tension between what is and what is desired that dictates the strength of the movement that leads us to realizing our vision (Fritz 1991: 26–29).

Stage 4: Take action

We take action as a result of feeling the tension in Stage 3. Because we know the difference between what is and the desired outcome, many of the necessary actions are obvious. However, that doesn't mean that the most obvious steps are taken. Sometimes we wait, because we think that further planning will guarantee the

outcome. This over-planning is a typical pitfall of creating. Creating requires action that must happen before an outcome can be realized. Therefore, we must put our ideas to work. Creation moves us from speculation about possibilities to real experience. We may decide that the action steps we identified during planning do not fit with reality; as a result, we may throw out our plans. Consequently, we learn about our ideas and how they will act in the real world through what we see and experience. Then and only then can we create the results we want (Fritz 1991: 30–32).

Stage 5: Adjust-learn-evaluate-adjust

In creating, learning is a continual process of discovery about what works and what doesn't. Through action, we learn at the cognitive level. Another form of learning is visceral, which is critical to creating, because it occurs at the subconscious level, helping us build our instincts for future creating. All of the skills garnered through creating are cumulative. Each action improves both cognitive and visceral learning. As our instincts sharpen so does our ability to determine early in the process whether a certain action will lead to a desired outcome. If not, we make adjustments and start over (Fritz 1991: 32–33).

Stage 6: Building momentum

People who are experienced creators build momentum to reduce the period of trial and error and to expand the energy available to carry them through to the end. Experienced creators know their personal rhythms. They know how to conserve and expend their energy. They know where to focus their attention. The best way to build momentum is through setting deadlines. Deadlines are often used in two ways: to manipulate action and to organize action. The latter is the more effective use of deadlines, because it helps us articulate how to achieve the desired outcome by a specified date. The purpose of setting deadlines is not to create pressure, but to build energy that helps us move through the creative process (Fritz 1991: 33–35).

Stage 7: Always have a place to go

Change and challenge are central to the human spirit. When we are faced with venturing into unfamiliar territory, we may hesitate out of fear of uncertainty. Over time our spirits will encourage us forward, especially if we have a place to go. It is harder for us to lose our way when there is a destination. Keeping

*All this fires my soul, and,
provided I am not disturbed, my
subject enlarges itself, becomes
methodised and defined, and the
whole, though it be long, stands
almost complete and finished in
my mind, so that I can survey it,
like a fine picture or a beautiful
statue, at a glance. Mozart*

our end result in mind is the way to focus our attention on the ultimate destination. If we hit an impasse, we need to keep setting tasks and accomplishing them until we get back on track (Fritz 1991: 36–37).

Stage 8: Completion

A successful creative process has an end. We must recognize and announce that the creation is done, no matter how hard it is to separate from our final product. When we accurately measure the outcome against the vision, and they match, we must then let the creation stand on its own merit (Fritz 1991: 37–38).

Stage 9: Living with our creation

When there is no more to do, we become the audience for our creation. We must evaluate it on its own merits. We may not be fully satisfied with our creation. In fact, we may have a love-hate relationship with it. Over time, though, we will likely become more objective about our creation and like or even love it. The only way to know for sure is to live with it (Fritz 1991: 38–39).

The purpose of our life on earth is to learn that our thoughts have power. We are constantly thinking, and every thought is filled with creative power. We are constantly creating, but most of it is done unconsciously. The purpose of articulating our vision is to get us into conscious creating. Laurie Beth Jones

These nine stages of creating sound fairly easy. The creative process starts with an idea and is followed by a vision for the outcome. The difference between present reality and the vision is obvious and dictates action. Adjustments are made, momentum builds, destinations are established, completion finally comes, and we live with the creation as our new reality. If it is so easy, why don't more people and organizations create new missions, services, inventions, or products? As Fritz points out in *The Path of Least Resistance*, "... energy moves where it is easiest for it to go" (1984: 3). This means that we go through life taking the path of least resistance. We are uncomfortable with change and creating new futures, because there is an abundance of resistance at both the individual and organizational levels. The resistance we experience results from impediments to the creative process. Next, we will discuss these impediments and all of the different ways they manifest.

Impediments to Creating

James Adams, in his book, *Conceptual Blockbusting: A Guide to Better Ideas* (1986), identified six major impediments to creating, which he refers to as blocks. We will explore each and discuss their implications for the creative process.

Blocks to Creating

<i>Perceptual</i>	<i>Emotional</i>	<i>Cultural</i>	<i>Environmental</i>	<i>Intellectual</i>	<i>Expressive</i>
Stereotyping	Feeling fear	Taboos	Identifying a supportive physical environment	Choosing intellectual processes	Communicate clearly
Isolating what drives us	Avoiding chaos	Fearing ridicule	Identifying a supportive social environment	Closing prematurely	
Delimiting current reality	Judging vs. generating ideas	Valuing reason above intuition		Identifying the right amount and integrity of the information	
Failing to see others' viewpoints	Relaxing and letting go	Using left- and right-brain thinking			
Feeling saturation	Balancing challenge and zeal	Keeping tradition vs. creating change			
Failing to utilize all sensory inputs	Living between reality and fantasy				

Perceptual Blocks

Perceptual blocks prevent us from seeing the current situation clearly. When we fail to see clearly, we often don't know what we need to do to create something else. Having clear perceptions is especially important to Stage 3 in the creative process, which is focused on accurately assessing current reality. There are six perceptual blocks, which follow (Adams 1986: 13–37).

Stereotyping: We see what we expect to see—we stereotype. Stereotyping is prevalent, and it effectively blocks reality. It is also the way our brains label, store, and retrieve information. Therefore, we can't do away

with it. All we can do is be cognizant of how we think and act based on our stereotypes.

Isolating What Drives Us: We often have difficulty in isolating that thing or feeling that has driven us to desire something new. In order to know the difference between what is and what we want, the situation must be isolated so it can be assessed. Without isolating the situation and investigating it from all angles, the action needed to create the desired outcome will likely be faulty. This perceptual block will hinder the action stage of the creative process.

Delimiting Current Reality: We may place too many constraints on the situation when we are isolating it. Isolating the current situation is like walking a tightrope. One wrong move can result in a fatal fall, which means that the situation must be viewed broadly enough so that all of its facets are known. If the isolating phase excessively delimits current reality, then all the ways the situation can be conceptualized and acted upon are not known. The unknown will result in elongating Stage 5 of the creative process, which is adjust-learn-evaluate-adjust.

Failing to See Others' Viewpoints: The inability to see others' viewpoints and interests can lead to serious problems, especially when creating in a group. Taking others' viewpoints into consideration expands conceptualization and typically leads to an outcome that can be embraced by everyone. Remember, the last stage of creating is living with the creation. If others can't live with it, the creation will not last.

Feeling Saturation: Saturation is a common perceptual block. There comes a point in the creative process when we feel overwhelmed with data, feelings, actions, reactions, movement, or the lack of movement. When this happens, saturation has set in. This is the time when the tension between what is and what we want keeps us going. The knowledge of where we are going, which is Stage 7 of the creative process, will take us beyond the experience of being overwhelmed while creating.

Failing to Utilize All Sensory Inputs: The last perceptual block is the failure to utilize all sensory inputs. When creating, we must be able to see, hear, feel, taste, and touch our creation. In other words, we must make it real. If it is not real to us, it will not be real to others.

Emotional Blocks

Emotional blocks are those internal aspects of ourselves that prevent us from creating freely. There are six emotional blocks, which follow (Adams 1986: 39–51).

Feeling Fear: Fear is the most common of the emotional blocks. Humans fear making mistakes, risking, and failing. From childhood through adulthood, we have been rewarded for doing things right, for maintaining the status quo, and for behaving like the rest of the human tribe. Is it any surprise that creating can elicit emotions in us from mild anxiety to debilitating terror? Fear is real. Its presence in the creative process should not be minimized. However, one way to confront this emotional block is to assess all of the negative consequences of the process and the desired outcome of the creation. An accurate assessment combined with a strategy to ameliorate negative consequences can be part of the action stage of the creative process.

Avoiding Chaos: We dislike chaos, and creating is messy. Our desire for order and our lack of appreciation for ambiguity is deeply rooted. We will do almost anything to bring order to chaos, even at the expense of the creation. However, it will be our ability to tolerate and even embrace incomplete or wrong data, misinformation, lack of cooperation, conflicting values, different work habits, vastly opposing opinions, people we don't like, and disappointing trial runs that will sustain us through creating.

Judging Versus Generating Ideas: Due to fear, we would rather judge than generate ideas. Judging is safe. Extending ourselves by offering new ideas is risky. That doesn't mean that judging is not important, but premature judging closes off new ideas. In fact, the first stage of creating is conceptualizing an idea. New ideas need time to mature. If they are killed immediately, their possibility is gone. There is a place for judging in the creative process. It is at Stage 5—Adjust-learn-evaluate-adjust. This is when we make mid-course adjustments to the creative process based on our evaluative judgements.

Relaxing and Letting Go: Sometimes the most appropriate action is to sleep on an idea. Relaxing and letting an idea come into its own is difficult because of our tendency to be compulsive about staying the course without any frivolity. The unconscious must have time to play with the idea, because that is when it fully develops. There is a famous story concerning August von Kekulé who, in 1865, was trying to visualize the molecular structure of benzene. He took a break from his work and dozed off in front of a fire on a snowy winter's night. While asleep he dreamed of a snake biting its own tail, and that dream gave him the answer to his problem. Upon awakening, Kekulé

immediately saw that the logical structure of carbon compounds was a closed chain or ring, like the image of the snake biting its own tail. His insight, while "sleeping on it," led to a revolution in organic chemistry (Maguire 1989: 124). If we cannot learn to sleep on it, we may be precluded from forming ideas. And there is no creation without ideas.

Balancing Challenge and Zeal: In order to create there must be sufficient challenge to keep us motivated; however, excessive challenge can lead to an overabundance of zeal. Too much zeal will drive the creative process too quickly, thus eliminating many avenues to creation. The tension brought about by knowing what is and what can be helps balance these two ends of the creative spectrum.

Living Between Reality and Fantasy: It is often hard to live between reality and fantasy. Reality is what is and fantasy, some would say, is our vision. In order to keep the creative process going, we must have and utilize imagination while at the same time living in the current reality.

Cultural Blocks

Cultural blocks are acquired through extended exposure to and experience with cultural patterns. There are five cultural blocks, which follow (Adams 1986: 53-64).

Taboos: Taboos are established to regulate behavior. They can severely hamper creating new futures, especially if our envisioned futures break traditions and taboos.

Fearing Ridicule: Though we fear being ridiculed, we must be able to laugh at our ideas and let others laugh at them as well. A sense of humor is important in creating. The process or result of creating may seem humorous because it is unfamiliar to so many. Recognizing this fact will go a long way in reducing our fear of looking ridiculous. Creating with humor will also help destroy the myth that work has to be dull and devoid of fun.

Seldom has the great art or great science of the world been paid for at the time of creation. It has been given, and in general has been cruelly received. You may cite honors and attentions and even money paid, but I would have you note that these were paid a long time after the creator had gone through his struggles. Robert Henri

Valuing Reason Above Intuition: We often value reason above intuition. Numbers, formulas, strategies, and quantifiable results are viewed as worthwhile. Qualitative results, anecdotal information, intuition, fun, and gut feelings are viewed as less important. Creating requires that we activate all aspects of what we know regardless of how we know it.

Using Left- and Right-Brain Thinking: As previously discussed, creating requires whole-brain thinking and learning. The cultural bias in favor of left-brain thinking and learning can cause havoc in creating. Creating requires a heavy dose of right-brain thinking, aided by left-brain thinking. If either way of thinking is stunted, the creation will not have the fullness and complexity it requires to sustain itself over time.

Keeping Tradition Versus Creating Change: Tradition often keeps us in the past and perpetuates resistance to change. Should all traditions be abandoned in favor of something new and different? No. On the other hand, when the desire to retain tradition clouds our ability to notice when change is imminent, we lose the ability to create it. Then, the future happens to us, and we are left to live with the results.

Environmental Blocks

Environmental blocks are imposed by our physical and social surroundings. There are two environmental blocks, which follow (Adams 1986: 65–69).

Identifying a Supportive Physical Environment: The physical environment can be full of distractions. We all know or need to become familiar with the kind of physical environment necessary for us to engage in creating. A supportive physical environment is one where conceptualizing, visioning, and the like can flourish.

Identifying a Supportive Social Environment: The social environment must also be open, honest, and supportive. There must be mutual respect and trust among the creators. A social environment devoid of such attributes will not work, because a free exchange will not exist. New ideas are often difficult to breathe life into because of the lack of support. Time, money, and commitment are crucial for new creations. Perhaps the lack of support is the biggest environmental block of all. We need to be aware of and honor all of the physical, social, and environmental needs of the creators we are joining with.

Intellectual Blocks

Intellectual blocks result in limited mental output. There are three such blocks, which follow (Adams 1986: 71–79).

Choosing Intellectual Processes: A common intellectual block is never consciously choosing a set of intellectual processes to employ in the creative process. We must match our mental work with what we need to create. If what is needed is to brainstorm ideas, then narrowing our ideas through a mathematical formula is the wrong intellectual choice. Another example is when we, as creators, talk a problem to death rather than draw a picture of it. Perhaps a visual representation of the idea is needed more than additional discussion.

Closing Prematurely: Coming to premature closure on all of the ways that an idea can become reality is a common intellectual block. We must try to bring new strategies into the process and not fall back on the familiar. The intellectual processes available are endless. Here are just a few of the approaches we could try: hypothesize the idea; build it up; tear it down; chart it; map it; diagram it; verbalize, teach, and symbolize it; exaggerate, understate, and manipulate it; write a poem; and dance to completion.

Identifying the Right Amount and Integrity of the Information: Another common intellectual block is the lack of, or incorrect, information. Also, the problem can be an overabundance of information. Ferreting out the right amount and the appropriate balance of information is critical. It is just as critical as having the correct information.

Expressive Blocks

Expressive blocks limit our ability to communicate our ideas to ourselves and to others. There is one primary expressive block (Adams 1986: 79–81).

*To have ideas one must
have imagination. To
express ideas one must have
science. Robert Henri*

Communicate Clearly: We must know the language of our creation and the language of those who will be judging or living with our creation. Successful communication of our ideas and the creative process are critical to the survival of both. In communicating, we must take nothing for granted. All stages of the creative process require mastery of communication.

The blocks we have just discussed are likely familiar to all of us. Either we have personally experienced them, witnessed others doing so, or both. When the blocks surface,

we can approach them either as impediments to change or as opportunities for growth. To turn impediments into opportunities, we must reframe them so that we see them differently. When we see differently, we act differently. This is sometimes referred to as “thinking and doing outside of the box”.

The creative process gives us freedom to think and do outside of the box, because it encourages us to play unencumbered in the field of ideas, visions, and outcomes. Jean Houston suggests that we embrace the passion for the possible and give up those things that hold us back. She makes her case by reporting that “as many events have happened from 1945 to today as have happened in the two thousand years before 1945” (1997: 3). Staying in old ways of thinking and doing will not serve us well in this time of unparalleled change. Houston goes on to say the following:

Our everyday lives reflect this quantum leap in the complexity and pace of contemporary experience. We are caught uncertain, unprepared, and unprotected in the face of too much happening too often. We are the people of the parenthesis, at the end of one era and not quite at the beginning of the new one. Some of us withdraw from the onslaught. We become workaholics. Or we find numbing solace in addictions or in hours spent staring at the television. Too many of us agree to lives of serial monotony and the progressive dimming of our passion for life. But many, a significant number, are trying to understand the momentous opportunity that is ours. The future is seeded in the time of parenthesis. We are among the most important people who have ever lived. We will determine whether humankind will grow or die, evolve or perish. (1997: 3–4)

Societal and Cultural Changes Resulting from Thinking and Acting Outside of the Box

Often our traditional ways of thinking and doing have resulted in living lives of separation. At a personal level, we have separated our minds from our bodies, our hearts from our intellect, and our actions from our values. At a societal or cultural level, we have separated individuals by their gender, race, and socioeconomic status. At a global level, we have separated from each other by nation-states and ideologies. However, in many small and large ways the separation is ending, because we are willing to think and act differently. The evidence is all around us that the walls of separation are



beginning to crumble. Biases are softening, and honoring of other ways of knowing, doing, and being are becoming apparent. A few examples will demonstrate this point.

One of the biggest shifts of our time is women and men beginning to live and work in full partnership with each other. Women can feel free to develop their abilities in reason, logic, numbers, and objective thinking. Men can feel free to develop their abilities in intuition, qualitative judgments, collaboration, and subjective thinking. What this means is that our repertoire of skills and abilities has doubled since this shift.

The increase of women in positions of power and influence has made it acceptable to engage in whole-brain thinking and learning.

Thus, whole-brain thinking and learning is another example of the end of separation. Prior to this revolution in ways of knowing, the dominant mode of thinking was left-brained. Getting through K-12 education was dependent on our ability to master left-brain thinking. The societal bias favored those of us who excelled in mastery of the law, order, reason, logic, science, and mathematics. It was believed that mastery in those areas showed discipline, objectivity, and an achievement orientation. Left-brain thinkers were being groomed to rule the world. In fact, intelligence and aptitude tests all measured our left-brain capabilities. If we did not do well on those tests, we were not allowed to enter an institution of higher education. We were counseled to learn a trade, have a family, or get a job.

*The universe is made of stories,
not of atoms.* Muriel Rukeyser

Right-brain thinking is associated with beauty, sensitivity, playfulness, feeling, openness, subjectivity, and imagery. Right-brain thinking focuses on imagination, intuition, and subconscious thinking. The traditional view of right-brain thinking was that it was for tortured painters, musicians, actors, and other creative sorts. Certainly, those of us who showed right-brain characteristics were never expected or encouraged to become CEOs, presidents of companies or countries, judges, astronauts, or diplomats.

Whole-brain thinking is now encouraged. In fact, the creative process discussed in this chapter is dependent on whole-brain thinking. If we don't access both hemispheres of the brain, we will suffer from half-witted thinking (Gelb 1998). Perhaps the most talked about advancement in understanding and embracing whole-brain thinking is the measurement of emotional intelligence. Emotional intelligence, or EQ, is another term for right-brain thinking and is based on the premise that we have two minds, one that thinks and one that feels (Goleman 1995). Goleman, in his book *Emotional Intelligence* (1995), makes the following point, "At best, IQ contributes about 20 percent to the factors that determine life success, which leaves 80 percent to other forces" (p. 34).

Another example of how the walls of separation are crumbling is the renewed interest in how cultures different from our own solve problems and do justice. Houston provides the following examples of problem solving from non-Western cultures. A tribe in West Africa

solves community issues by dancing the problem, singing about it, drawing it, closing their eyes and imagining the solution, sleeping and dreaming about it. A solution arrives because they run the problem through different modes of knowing and different viewpoints. The Inuit peoples of northern Canada and Alaska fix mechanical problems by taking them to a mechanic who closes his eyes and walks through the faulty engine in his mind. Inuit peoples developed this expertise in visualization because they had to hold in their minds an inner map of the details of a landscape that disappeared in the snow (1997: 6–7). In the United States, the concept of restorative justice is receiving serious attention. Restorative justice is based upon restoring the victim, the offender, and the community to wholeness. It is the Navajo Nation Peace-Maker system of justice and is centuries old.

Men and women living and working in full partnership with each other, whole-brain thinking and learning, and taking what we learn from other cultures and applying it to our own are all examples of how the separation we have experienced for centuries is coming to an end. Preparing for the challenge of the future requires us to see, think, know, learn, and do in a myriad of ways. We live in an interconnected world that is ever changing. “. . . [W]e are called into greatness by the necessity of our age, and we have little choice but to say yes” (Houston 1997: 5).

Fortunately, others have gone before us who have thought and acted in ways peculiar for their times and cultures. We have benefited from their bravery because they have changed us. Individuals such as Chief Joseph of the Nimipu (Nez Percé) demonstrated uncommon wisdom, Abraham Lincoln showed vision, Martin Luther King mobilized a people, and Mother Theresa expanded our understanding of selfless service. They all saw what was and decided they could do better. They created something different.

Creating something different, as we have previously discussed, requires us to get out of the box, and to get out of the box we must use all of ourselves (i.e., multiple intelligence). An example of someone who used all of himself is Leonardo da Vinci. Da Vinci is a good teacher for the new millennium, an age that will push us to use our multiple intelligence to meet the demands of rapid change.

Leonardo da Vinci: A Teacher for the New Millennium

Leonardo da Vinci was born on April 15, 1452 and died on May 2, 1519. Yet all these centuries later, Da Vinci is regarded as the greatest genius of all time.

Da Vinci can teach us much about what it takes to develop and use multiple intelligence during a time of immense change. He lived during the Renaissance, until now the period of greatest change in human history. The ways Da Vinci thought, learned, and practiced

We are governed not by armies and police but by ideas. **Mona Caird**

throughout his life allowed him to make great contributions to many diverse fields. To fully grasp what Da Vinci can teach us, we must look at his accomplishments. What follows is a partial listing of those accomplishments from Michael J. Gelb's book *How to Think Like Leonardo da Vinci* (1998).



Da Vinci the Artist

- ✧ The first Western artist to make landscape the prime subject of a painting
- ✧ Pioneered the use of oil paints
- ✧ Painted the Mona Lisa, The Last Supper, The Virgin of the Rocks, The Madonna and Child with St. Anne, The Adoration of the Magi, St. John the Baptist, and a portrait of Ginevra de' Benci

Da Vinci the Architect and Sculptor

- ✧ Developed general principles of design
- ✧ Consulted on projects that resulted in cathedrals in Milan and Pavia
- ✧ Sculpted three bronzes on the north door of the Baptistery in Florence

Da Vinci the Inventor

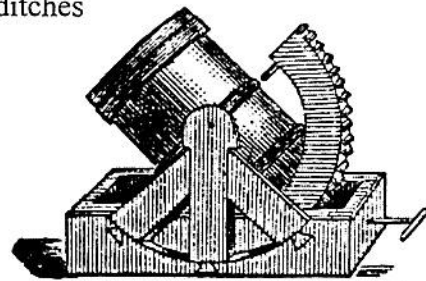
- ✧ Made plans for a flying machine, a helicopter, and a parachute
- ✧ Invented the extended ladder, which is still used today by fire departments; the three-speed gear shift; a machine for cutting threads in screws; the bicycle; the adjustable monkey wrench; a snorkel; a hydraulic jack; the first revolving stage; locks for a canal system; a horizontal waterwheel; folding furniture; an olive press; a water-powered alarm clock; a therapeutic arm chair; and a crane for clearing ditches
- ✧ Pioneered the concept of automation

Da Vinci the Military Engineer

- ✧ Made plans for the armored tank, machine gun, mortar, guided missile, and submarine

Da Vinci the Scientist

- ✧ Pioneered the discipline of modern comparative anatomy, was the first to draw parts of the body in cross section, studied babies in the womb, and made the first casts of the brain and ventricles of the heart
- ✧ Pioneered modern botanical science
- ✧ Made significant discoveries about fossilization
- ✧ Anticipated the disciplines of hydrostatics, optics, and mechanics



From this list we can conclude that Da Vinci never hampered himself by believing that there was only one way of knowing, doing, or being. He equally used the objective and the subjective, the rational and the intuitive, the imaginative and the logical, the conscious and subconscious, and the romantic and the practical. We can learn from Da Vinci through embracing the seven Da Vincian principles (Gelb 1998: 40–45).

Principle 1: *Curiosità* or Curiosity

Da Vinci had an insatiable curiosity for life and carried out an unrelenting quest for continuous learning. Curiosity is about asking confounding questions with the same intensity for as long as we live. It is about not being satisfied with just knowing how things appear. True curiosity drives deep discovery and results in rich and complex learnings. Curiosity leads to a questing frame of mind that broadens our universe and improves our ability to travel through it (Gelb 1998: 48–55).



Principle 2: *Dimostrazione* or Demonstration

Da Vinci's early training was as an apprentice to Verrocchio, the artist. Da Vinci learned through experience. His training was practical. Thus, he had to stay the course and be willing to test what he knew and learn from his mistakes. This is the role of demonstration—to learn from experience, to question our views and the views of others, to challenge prevailing opinions and theories, and to challenge our assumptions and beliefs as well as the assumptions and beliefs of others (Gelb 1998: 76–80).

Principle 3: *Sensazione* or Sensing

Da Vinci believed that sight, sound, touch, taste, and smell were the lifeblood of experience. For Da Vinci the lessons of experience came alive only when all of the senses were activated (Gelb 1998: 94–95).

Yet Leonardo reflected sadly that the average human “looks without feeling, eats without tasting, moves without physical awareness, inhales without awareness of odour or fragrance, and talks without thinking.” His assessment reads, centuries later, as an invitation to improve our senses—and our minds and experiences along the way. (Gelb 1998:97)

Principle 4: Sfumato or Going up in Smoke

Da Vinci demonstrated that the single most powerful key to unleashing creative potential was to have an open mind in the face of uncertainty. Thus, we must develop the ability to live with ambiguity, paradox, uncertainty, and the tension created by simultaneously holding opposites (Gelb 1998: 142–146).

In the past, a high tolerance for uncertainty was a quality to be found only in great geniuses like Leonardo. As change accelerates, we now find that ambiguity multiplies, and illusions of certainty become more difficult to maintain. The ability to thrive with ambiguity must become part of our everyday lives. Poise in the face of paradox is a key not only to effectiveness, but also to sanity in a rapidly changing world. (Gelb 1998: 150)

Principle 5: Arte and Scienza or Art and Science

Da Vinci developed balance between science and art and between logic and imagination. He was a whole-brain thinker who believed that all endeavors required the application of both imagination and analysis (Gelb 1998: 164–169).

Principle 6: Corporalita or Physicality

Da Vinci believed in the importance of health and well-being. He saw the connection between mind and body and believed that both had to be in harmony with each other and that both had to be healthy and strong. “He was psychophysically ambidextrous” (Gelb 1998: 192–194).

Principle 7: Connessione or Interconnectedness

Da Vinci recognized and appreciated the interconnectedness of all things. He was the quintessential systems thinker who did not separate things and phenomena by categories, outlines, paradigms, taxonomies, and the like. He looked, instead, for how those things he observed and experienced came together (Gelb 1998: 220–224).

What does Da Vinci really teach us? He teaches us to experience wonder and passion for our everyday lives. He also teaches us to immerse ourselves in whatever we wish to discover, create, fix, or change. Last, Da Vinci teaches us that one way of thinking, knowing, seeing, or learning will not lead us to greatness, wisdom, inspiration, or completeness.

Conclusion

Change is now occurring at such a rapid pace that, unless we adapt, we will not be able to withstand the pressure. The application of Da Vincian principles can help us redesign who we are and how we behave so that we can keep up with the accelerated rate of change that is pervasive in every social, economic, and political structure.

The need to redesign was addressed by Stephen Bertman in an article titled "Hyper Culture."

The principles of physics that explain the sound barrier can also help us understand the origin and nature of stress in our lives. As the velocity of everyday life increases—as we fly faster and faster through the atmosphere of daily experience—our "aircraft" encounters a turbulence it was never designed to withstand. As our speed increases, invisible pressures build up, pressures strong enough to shatter the structural integrity of our personalities and our relationships. Ultimately, we may lose control, or the craft we fly may disintegrate. The simple solution, of course, is to slow down. But if we cannot slow down—or choose not to—the only remaining answer is to redesign our lives, to adapt structurally to our newfound speed. (p. 18)

Since we are not made of nuts and bolts, we can't develop a new physical body as the aerospace industry can develop new aircraft. However, we can redesign our internal selves to withstand the increased pressures. Once we have redesigned our mental, emotional, and spiritual selves we can redesign our organizations and other societal structures. Our tools are the creative process and Da Vincian thinking. Embracing both will take us to where we need to go just in the nick of time.

Experiencing My Creative Process

A Workbook



Stage 1: Conception

I have many ideas about the courts of the 21st century. The idea I feel most passionately about is

This idea matters to me because

My idea could result in

Stage 2: *Vision*

I have thought about all of the results my idea could generate. I see the most likely result being

The attributes this result will have are

State 3: *Current Reality*

I like my idea (conception) and how the court would be affected by it (vision). The differences between what I can see for the future and what is (current reality) are many. They are

Stage 4: *Take Action*

For my vision to become the new reality, I must take action. There are many obvious steps I must take as well as other less obvious ones that are equally important to the future of the courts.

Obvious Steps or Primary Actions

Less Obvious Steps or Secondary Actions

Stage 5: *Adjust-Learn-Evaluate-Adjust*

I will learn many things about how to make changes in the court environment. As a result of what I learn, I will evaluate and make adjustments accordingly.

Learnings

Evaluation

Adjustment

Stage 6: Building Momentum

Initiating change in the courts requires energy and stamina. I have learned that to build and sustain momentum I must set deadlines. The deadlines need to correspond with the structural, financial, and political cycles of court operations.

Action	Deadline	Court Cycle to Consider

Stage 7: *Always Have a Place to Go*

When the court change becomes excessively complicated or is slowed by unforeseen forces, I always reflect on where I want to go. Through this reflection I can map a new path.

Stalled Idea or Activity	Destination	New Path

Stage 8: Completion

Wow, I finally made it! I have many final touches to add before I release this creation. Those touches are

Stage 9: *Living with Our Creation*

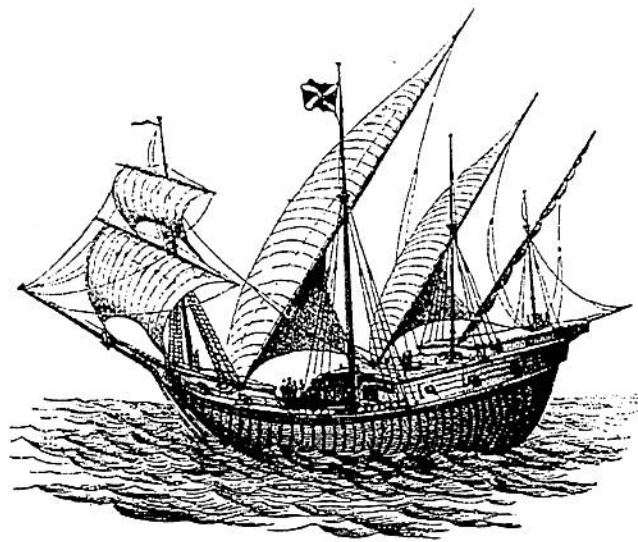
Now that the vision I desired to create for the court is completed, I must let it go and live with it.

Steps I will take to release my creation

Things I will do to become comfortable with my creation when it receives the inevitable positive and negative appraisals

**Exploring My Blocks to Creating a
New Future for the Courts**

A Workbook



Perceptual Blocks

Identifying my stereotypes

- ◆ What value do I place on the courts?
- ◆ What do I think about how the courts operate?
- ◆ What do I believe about the people the courts serve?
- ◆ What do I think about judges?
- ◆ What do I think about court employees?
- ◆ Do I think the courts can change?
- ◆ Do I believe that the courts want to change?
- ◆ What do I believe about judicial branch education that makes me glorify or diminish the long-term effect that it can have on the quality of the courts' operations, decisions, and services?
- ◆ What do I think about those individuals who attend judicial branch education programs?
- ◆ What do I think about those who plan, direct, deliver, or teach judicial branch education programs?

Identifying my difficulties in isolating problems

- ◆ What are the challenges for the courts at the close of this millenium?
- ◆ How will I know if it is a challenge or a temporary disturbance?
- ◆ Who are the people who can help me identify the challenges facing the courts?
- ◆ What information would help illuminate all aspects of the challenge?
- ◆ What must I know about judicial branch education to assess and understand its potential for helping the courts meet their challenges?
- ◆ What knowledge, information, and experiences must I have to make an accurate appraisal of the potential of judicial branch education?
- ◆ What are the right questions to ask about judicial branch education?
- ◆ Who would give me the most and least information about judicial branch education?

Identifying how I delimit problems

- ◆ How have I not seen the magnitude of the challenges facing the courts now and in the new millennium?
- ◆ Who have I not talked to?
- ◆ What information have I overlooked?
- ◆ What do I not know about judicial branch education that could lead to an expanded vision of the role it can play in preparing the courts for the new millennium?
- ◆ What information am I lacking about its structure, process, programming, and philosophy?
- ◆ Who have I not talked to that could more fully and accurately explain the potential of judicial branch education?
- ◆ What do I not want to see or know about the courts and judicial branch education?
- ◆ Why do I not want to see or know it?

Soliciting the viewpoints of others

- ◆ What must I do to welcome the viewpoints of others about the way the courts could change or remain the same for the next millennium?
- ◆ What must I do to solicit the viewpoints of others on the level of importance and potential impact of judicial branch education as a mechanism for court change?
- ◆ Who should I talk to?
- ◆ What should I ask as it relates to the courts and judicial branch education?
- ◆ What must I do to embrace differing viewpoints?
- ◆ Am I willing to alter my viewpoint in the face of convincing evidence that it is time to do so?

Identifying when I am overwhelmed

- ◆ What are the signs of feeling overwhelmed?
- ◆ How will I pace myself so I don't become overwhelmed?
- ◆ How will I reinvigorate myself if I feel overwhelmed?
- ◆ When will I know that I have looked at, talked about, and analyzed enough about the courts and judicial branch education?

Identifying how many of my senses have been involved

- ◆ How rich are my ideas, and how clear is my vision about the future of the courts?
 - ◆ How full-bodied are my ideas about the potential of judicial branch education to help facilitate court change?
 - ◆ How much have I played with my ideas?
 - ◆ Can I feel their energy?
 - ◆ Can I touch the dimensions of the ideas?
 - ◆ Can I see the magnitude of my ideas?
 - ◆ Can I generate enthusiasm for my ideas through the verbal and visual images that I project about their possibilities?
-

Emotional Blocks

Identifying my fears

- ◆ What do I fear about creating a new or expanded vision of the courts?
- ◆ What do I fear about elevating the presence and role of judicial branch education in the courts?
- ◆ What kind of mistakes am I afraid I will make?
- ◆ What will I be risking as it relates to my status, the approval of my peers, my reputation, or my position?
- ◆ What happens if I can't create the change after I announced that I would do so?
- ◆ Who will I alienate?
- ◆ How much will it cost?

Exploring my discomfort with chaos

- ◆ How much chaos will be involved in creating new court structures, systems, and services?
- ◆ How messy will it be to retool judicial branch education and educate judges and court personnel so that they are ready for the courts of the new millennium?
- ◆ How will I feel in the midst of chaos and messiness?
- ◆ What will my behavior be like?
- ◆ How often will people withhold information?
- ◆ How much misinformation and faulty data am I likely to get?
- ◆ How many others will fail to cooperate?
- ◆ Who will attempt to sabotage the effort?
- ◆ How much resistance will I experience?

Identifying the impact of judging rather than generating ideas

- ◆ Who can I expect to throw up roadblocks to creating a new future for the courts through their judgments?
- ◆ Who will harshly judge the role of judicial branch education as a vehicle for change?
- ◆ How long should I let an idea mature before I make it public?
- ◆ How do I continue in the face of premature and harsh judgments?
- ◆ How do I get idea generators in equal numbers with idea stoppers in the creative process?
- ◆ How do I confront those who want to derail the creative process through their judging behavior?

Identifying how I resist letting an idea gestate

- ◆ How can I relax with my ideas so that they can fully mature?
- ◆ How do I know when an idea's time has come?
- ◆ How do I learn to trust my instincts in creating?
- ◆ How do I learn to trust my skill as a creator of ideas and visions?

Identifying my mix of challenge and zeal

- ♦ What will motivate me to continue to grow my ideas for change in the courts and in judicial branch education?
- ♦ What will prevent me from being so motivated that I idealize the process and overlook potential stumbling blocks that could cause difficulties later?

Identifying how to live in reality and fantasy simultaneously

- ♦ Will I be able to hold the vision and current reality simultaneously?
 - ♦ Will I be able to deflect others' criticism concerning being realistic about the level of change that can occur in the courts when I know "being realistic" means that they are resisting reasonable change?
-
-

Cultural Blocks

Determining the taboos

- ♦ What about the courts is sacred?
 - ♦ What about judicial branch education is off-limits?
 - ♦ How will the court culture try to prevent change?
 - ♦ How will I be shunned if I tamper with the status quo?
 - ♦ Who will be threatened by the proposed changes?
 - ♦ What unspoken rule or taboo will I tamper with or break by my efforts?
-
-

Using reason and intuition

- ♦ How do I balance the use of reason and intuition in the change process?
- ♦ What qualitative data about the perceptions of the courts would be important to factor into the change process?
- ♦ What quantitative data would be necessary to demonstrate the power of judicial branch education in transforming the court system?

Using left- and right-brain thinking

- ◆ How do I ensure that the objective and the subjective, the practical and the romantic, the quantitative and the qualitative, and the analytical and the imaginative dimensions of my vision are conveyed?
- ◆ How do I ensure that both are equally respected for the important contributions that each can make?

Identifying how to balance the importance of tradition with the need to change

- ◆ How do I maintain traditions that uphold the constitutional role of the courts in our democracy?
 - ◆ How do I change the traditions of the courts that are self-serving and diminish the noble work of the courts?
 - ◆ How do I transform the traditional role of judicial branch education so it can more effectively serve the courts in the new millennium?
-
-

Environmental Blocks

Identifying how to construct a supportive physical and social environment

- ◆ How do I create a physical environment that is free from distractions so I can conceptualize ideas, vision results, and conduct trial runs?
 - ◆ Where would such an environment be, what would it look like, and what would it contain for equipment and supplies?
 - ◆ How do I create a social environment that demonstrates support through time, money, and commitment?
 - ◆ How much time will I need, how much money will it take, and who needs to be committed and how?
-
-

Intellectual Blocks

Identifying when I am employing limited mental output

- ◆ How many different ways can I approach the creative process?
 - ◆ What is the desired outcome of my ideas and visions, and how do I know that I have used all of the necessary mental outputs to achieve the outcome?
-

Avoiding premature closure

- ◆ How do I know that I have explored all the avenues that can make my vision a reality?
 - ◆ Have I evaluated each avenue fairly and accurately?
 - ◆ What factors should be present to signal when I am done?
 - ◆ Who can I go to for a second opinion?
-

Checking the accuracy of my information

- ◆ How do I know I have enough information?
 - ◆ How do I know it is the appropriate information for what I am planning?
 - ◆ How do I know the information is deep enough and broad enough to fully inform me?
-

Expressive Blocks

Identifying how I can communicate my ideas more effectively

- ◆ What language do I speak when creating?
 - ◆ Is it descriptive enough?
 - ◆ Does it excite?
 - ◆ Does it inform?
 - ◆ Will others understand it?
 - ◆ Is it full, with enough texture?
 - ◆ What languages do others speak who will be touched by my ideas?
 - ◆ Will I understand their languages?
 - ◆ Where will the communication gaps be between what we know, how we speak, and what we understand?
-

Notes

Acknowledgments

¹With the exception of the National Symposium on the Future of Judicial Branch Education logo, which appears on page 21 and was provided courtesy of the Arizona Supreme Court, the images used herein were obtained from IMSI's MasterClips® and MasterPhotos™ Premium Image Collection, 1895 Francisco Blvd. East, San Rafael, CA 94901-5506.

Chapter One: Exploring Trends Affecting State Courts

¹ The trends described in this chapter arise out of the strategic planning process developed over the past twenty years within the Office of the Executive Secretary (OES) of the Supreme Court of Virginia. Professor Jim Dator of the University of Hawaii and a team from the Hawaii Research Center for Future Studies (HRCFS), under contract with OES, undertake periodic environmental scans of national and international sources to identify current and emerging trends with significance to the courts. Sources include: myriad print and Internet sources; national and Virginia demographic information; newspaper and magazine articles; Virginia-specific material (e.g., *Spotlight on Virginia*, published by the Weldon Cooper Center for Public Service at the University of Virginia); information gathered at seminars; input from the legal/court system; reactor groups composed of senior level staff within OES and selected individuals within the court system; and surveys of the public. The 2000-2002 Strategic Plan, a synthesis of this information, was the source of most of the trends described in this article with the addition of two still relevant trends from the 1996-1998 plan.

² These Virginia Court trends were first compared in a presentation by Clement Bezold, Institute for Alternative Futures (IAF), at the 1998 CCJ/COSCA Annual Meeting in Detroit.

³ Marilyn Werber Serafini, "One in Six and Counting: A Summary-Faces of the Uninsured," *National Journal* (Friday, July 16, 1999) <<http://www.cloakroom.com/>>. Statistics from analysis of Organisation for Economic Co-operation and Development (OECD) on-line data, Health Data 99, Frequently Asked Data-Health Expenditure <http://www.oecd.org/els/health/fad_1.htm>.

⁴ See for example, D. Dumanoski and J.P. Myers, *Our Stolen Future* (London: Abacus, 1996) and Michael Lerner, "The Future of Cancer Prevention and Treatment in the United States," in Helene G. Brown, John Seffrin, and Clement Bezold, eds., *Horizons 2013: Longer, Better Life Without Cancer* (Atlanta: American Cancer Society, 1996): 58-59.

Chapter Two: Futures Tools and the Courts

¹ © Institute for Alternative Futures (IAF). Permission for use granted to JERRIT.

² Clement Bezold, Ph.D., is President of IAF.

³ IAF, Hawaii Research Center for Futures Studies, and National Center for State Courts, *Reinventing Courts for the 21st Century—Designing a Vision Process*, a guidebook to visioning and futures thinking within the court system, and related video, *Envisioning Justice: Reinventing the Courts for the 21st Century* (Williamsburg: National Center for State Courts, 1993), available from IAF. For further information visit the IAF Web site <<http://www.altfutures.com>>.

⁴ In addition to a large number of internal reports and the articles and abstracts contained in the quarterly newsletter of the Hawaii Judiciary, *Nu Hou Kanawai: Justice Horizons*, the following articles were published as a consequence of the work of the futures unit in the Hawaii Judiciary: S. Inayatullah, "Challenges Ahead for State Judiciaries," *Futurics* 9 (2) (1985): 1–9; S. Inayatullah, "The Future of State Court Administration," *Futures Research Quarterly* 2 (1) (1986): 5–18; S. Inayatullah, "Issues and Disputes in the Emerging Pacific Era," *Futures Research Quarterly* 3 (3) (1987): 74–79; P. McNally and S. Inayatullah, "The Rights of Robots," *Futures* 20 (2) (1988): 119–136; P. McNally, "The Planner, Planning, and Leadership," *Futures Research Quarterly* 4 (4) (1988): 5–14; "A Decade of Forecasting: Some Perspectives on Futures Studies in the Hawaii Judiciary," *Futures Research Quarterly* 5 (1) (1989): 5–20; and "Judicial Foresight in the Hawaii Judiciary," *Futures* (October 1991), revised as "Preliminary Report of the 1991 Judicial Foresight Congress," *Futures Research Quarterly* 8 (3) (1992): 76–90.

⁵ This book on the effects of pesticides serves as a landmark in the ecology movement.

⁶ James Collins, quoted in Joe Flower, "Built to Last: A Conversation with James Collins," *Healthcare Forum Journal* (September/October 1995): 63.

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