

Denver Law Review

Volume 69 | Issue 2

Article 3

February 2021

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Recommended Citation

Lars Fuller & Craig Boersema, Judging the Future: How Social Trends Will Affect the Courts, 69 Denv. U. L. Rev. 201 (1992).

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JUDGING THE FUTURE: HOW SOCIAL TRENDS WILL AFFECT THE COURTS

LARS FULLER AND CRAIG BOERSEMA*

I. INTRODUCTION

Over the next thirty years, technological and demographic changes will be occurring more rapidly than ever.¹ This reality challenges the quality of justice provided by today's judicial system. Fortunately, courts have the opportunity to prepare proactively for the changes that have been forecast. Considered on the "cutting edge" in judicial administration, nine state judiciaries—including Colorado's—are conducting or have completed long-range planning efforts (i.e. futures research), which examine developing social trends and attempt to set direction needed for the future.²

Long-range planners recognize that the future provides the opportunity to achieve certain goals. These planners identify social trends in order to better guide the achievement of those objectives. To organize their goals, planners develop a singular ideal—a "vision." After the vision has been defined, the planners outline the steps necessary for its implementation.

Consequently, long-range planning in the courts requires identification of social trends that will shape the future.³ Futurists define a

* Lars Fuller and Craig Boersema staff "Vision 2020: Colorado Courts of the Future," a project conducted by the Colorado Judicial Department. Lars Fuller is a Research Assistant for the project and Craig Boersema is the Project Director. The study is funded by the State Justice Institute (Grant SJI-90-05D-A-069) with matching funds appropriated by the Colorado General Assembly. The authors would like to thank Dr. Joyce Sterling and members of Task Force 4: "Judicial Responses to Social Issues" for their contributions to this article. Points of view expressed herein do not necessarily represent the official positions or policies of the State Justice Institute.

1. Dr. Lou House, Address at "Vision 2020: Colorado Courts of the Future" Executive Summary of the Task Force Training Session (January 18, 1991). Dr. House, the Director of External Research at U.S. West, in Englewood, Colorado, stated that technological information in the world is doubling every three years. See MARVIN CETRON & OWEN DAVIES, *AMERICAN RENAISSANCE: OUR LIFE AT THE TURN OF THE 21ST CENTURY* (1990).

2. Five states currently have active futures projects: Colorado, California, Massachusetts, Maine and Georgia. Virginia, Arizona and Utah have recently completed futures projects. Hawaii has institutionalized futures planning within its Judicial Department. The Colorado project is entitled "Vision 2020: Colorado Courts of the Future." It is structured around four task forces (Quality of Justice, Structure of the Courts, Administration of Justice, and Judicial Responses to Social Issues), and is comprised of over eighty task force members. The Colorado project is an eighteen-month effort, and a final report was submitted to the Colorado Supreme Court on March 31, 1992.

3. *Creating 21st Century Courts: Guidebook for Court Visioning* (The Institute For Alternative Futures, The Hawaii Research Center For Future Studies, The National Center for State Courts), Aug. 12, 1991, at 5 [hereinafter *Guidebook*].

trend as being a pattern of change over time.⁴ Because demographics quantify certain elements of the population, they are especially helpful at identifying trends.⁵ Through demographics, it is possible to determine population numbers and ethnic and racial breakdowns. Further, demographic statistics enable forecasting for workforce participation as well as for demands upon education and health institutions due to the impact of age and family statistics on those areas. Other topics, such as technology and the environment, have demographic implications as well.

Possible scenarios of how the future might look may be developed from these trends.⁶ Each different scenario represents the reality that given society's influential factors, completely accurate prediction is impossible. Planners are able, however, to distinguish between probable, possible and unlikely scenarios. The ideal judicial system is then envisioned given those possibilities, and the final stage of the process identifies the specific steps that will achieve the ideal. By distinguishing what is truly desired and anticipating the developing trends, courts are able to use long-range planning to shape their futures and deliver the quality of justice expected by consumers.

This Article will address the first step of this methodology and identify major social trends that will impact the courts over the next thirty years. Demographic changes and emerging technology will affect the judicial system in many dramatic ways.⁷ As caseloads increase with populations and state legislatures have more difficulty finding funds for the judiciary, the need for courts to plan for the future becomes particularly imperative.⁸

II. EDUCATION AND LABOR ISSUES

Both education and labor issues will play major roles in determining the status of future society. By the turn of the century, technological changes will radically shift the workforce into predominantly service related jobs.⁹ Addressing this shift are today's educators, who are challenged to prepare students for workplaces and positions that currently

4. *Id.* See CLEMENT BEZOLD, NATIONAL INSTITUTE FOR DISPUTE RESOLUTION, *MACROTRENDS AFFECTING DISPUTE RESOLUTION I* (1990).

5. *Guidebook*, *supra* note 3, at 5. See Elizabeth Ehrlich, *Social Trends: How Will the Next Decade Differ*, *BUS. WK.*, Sept. 25, 1989, at 142.

6. JAMES A. DATOR & SHARON J. RODGERS, STATE JUSTICE INSTITUTE AND THE AMERICAN JUDICATURE SOCIETY, *ALTERNATIVE FUTURES FOR THE STATE COURTS OF 2020* (1991). Seven court-related scenarios for the future were developed, which conceived of different possibilities for society in 2020. *Id.*

7. For example, historically in Colorado a one-percent increase in population results in a two-percent increase in district court filings. Daniel J. Hall, Address at State Court Administrator's Office to Task Force 4 of "Vision 2020: Colorado Courts of the Future" (May 14, 1991). See NATIONAL CENTER FOR STATE COURTS, *STATE COURT CASELOAD STATISTICS 1984 ANN. REP.* (1986); ARNOLD LINSKY & MURRAY STRAUSS, *SOCIAL STRESS IN THE UNITED STATES: LINKS TO REGIONAL PATTERNS IN CRIME AND ILLNESS* (1986).

8. James Austin, *America's Growing Correctional-Industrial Complex*, *FOCUS, THE NATIONAL COUNCIL ON CRIME AND DELINQUENCY*, Dec. 1990, at 1.

9. CETRON & DAVIES, *supra* note 1, at 352.

do not exist.¹⁰ With the changes expected, the importance of preparing the potential workforce for new types of jobs has intertwined education and labor issues. Four trends will affect the future quality of education and labor in Colorado as well as the rest of the country, creating meaningful issues with which the courts must deal.

A. *Widening Skills Gap*

The rapidly widening gap between the job skills required of and held by the workforce is the most important emerging issue in the field of education and labor.¹¹ As new positions materialize and new skills are required, fewer workers will have the skills needed to fill jobs.¹² A shortage of qualified workers could lower productivity and income throughout society.¹³ Businesses are already concerned about the scarcity of qualified "knowledge workers."¹⁴ In addition, the demand for workers with highly technical skills may be hurt by labor shortages created by a slow growth in the working-age population.¹⁵ The number of entry level workers has been decreasing since 1976 and is not expected to grow at all between 1988 and 2000.¹⁶

The skills gap will generate several critical changes in education.¹⁷ Rapid technological advances and competition with younger and better educated workers overseas will go unmet if the United States continues to fail at teaching needed skills.¹⁸ Lackluster test scores continue to sound the alarm for educational reform, and as the skills gap grows

10. "In the year 2000, 85 percent of high school graduates will be going into jobs that do not yet exist." Dr. Sharon Ford, Address at "Vision 2020: Colorado Courts of the Future," Inaugural Training Session (Jan. 18, 1991). See Elizabeth Dole, *Help Wanted: Skills for the '90s*, HUM. CAP., Nov. 1990, at 14.

11. WILLIAM B. JOHNSTON, *WORKFORCE 2000: WORK & WORKERS FOR THE TWENTY-FIRST CENTURY* 95 (1987). The skill mix of the U.S. economy will increase substantially by the end of the century. *Id.* at 98-99. See Barbara Kantrowitz & Pat Wingert, *A Nation Running in Place: Tests Show No Progress in a Competitive World*, NEWSWEEK, Oct. 14, 1991, at 54. "[W]ithout more sophisticated math skills, we'll be a nation of people completely out of contention for jobs. We'll be a nation of unemployed people because most entry-level positions today require some proficiency in algebra and high-level mathematics." *Id.*

12. Dole, *supra* note 10, at 14. "The 'skills gap' would be disturbing and dangerous enough on its own. But its danger is heightened by the fact that our work force is growing at only 1% annually." *Id.*

13. BUREAU OF THE CENSUS, U.S. DEPT. OF COMMERCE, *STATISTICAL ABSTRACT OF THE UNITED STATES* 425 (1990) [hereinafter CENSUS].

14. Companies surveyed are most worried about hiring "knowledge workers," or technically skilled employees and professionals, and claim they will continue to be the hardest to recruit. TOWERS PERRIN & HUDSON INSTITUTE, *WORKFORCE 2000* 4 (1990).

15. Although three-quarters of all Americans will be of prime working age—24 to 55—in the 1990s, the growth of the U.S. labor-force is slowing perceptibly. Ehrlich, *supra* note 5, at 142. See Howard Fullerton, *New Labor Force Projections, Spanning 1988 to 2000*, MONTHLY LAB. REV., Nov. 1989, at 3, 5.

16. There will be 4 percent fewer workers age 16-24 in 2000 than there were in 1988. Fullerton, *supra* note 15, at 4. See CETRON & DAVIES, *supra* note 1.

17. *Youth 2000 Task Force, Colorado's Competitive Edge, a Report to the Governor, Legislature, Business Community and Citizens of Colorado* 2 (1989) [hereinafter *Youth 2000 Task Force*]. See Dole, *supra* note 10. "Today's jobs demand better reading, writing, and reasoning skills and much greater competence in math and science." *Id.* at 14.

18. See Barbara Kantrowitz & Pat Wingert, *The Best Schools in the World*, NEWSWEEK, Dec. 2, 1991, at 50.

wider, radical changes may be proposed.¹⁹ Slow growth in the working-age population will also necessitate educating and retraining an aging and diverse workforce.²⁰

Within the labor force, future job market opportunities could be a boom for some and a bust for others.²¹ Of the new jobs created over the 1984-2000 period, more than half will require education beyond high school and approximately one-third will be filled by college graduates.²² Today, only twenty-two percent of all occupations require a college degree.²³ The median number of years of education required by new jobs created by the year 2000 will be 13.5, whereas the current number is 12.8 days.²⁴ The fastest growing jobs will require advanced math, and more language and reasoning capabilities than jobs currently available.²⁵ At the same time, the workforce will see a boom in service related jobs not requiring higher education.²⁶ However, in spite of this growth, only four percent of all new jobs will be filled by individuals with the lowest levels of language, reasoning and mathematical skills, compared to nine percent of jobs requiring such a level of skills today.²⁷ Over forty percent of new jobs will require advanced skills, compared with only twenty-four percent today.²⁸ In light of projected lower levels of migration into Colorado, the state's education system and employee training programs must educate workers as to the skills required to succeed in the future.²⁹

The widening skills gap will increase the advantages of the economically privileged and emphasize the disadvantages of the poor. Those able to attain these needed skills through high quality education will be the most desired workers, creating an even more dramatic polarization of the "haves" and "have nots."³⁰ As employers continue to demand better educated and skilled workers, the unequal distribution of educational services will have a particularly harsh impact upon minorities. In particular, Blacks and Hispanics who lag significantly behind Whites in education will face the greatest difficulties.³¹ Consequently, the strug-

19. *Id.* See CETRON & DAVIES, *supra* note 1, at 349.

20. CETRON & DAVIES, *supra* note 1, at 348. The increased use of automation and computers that demand a high degree of literacy will force businesses to provide continuous training for their workers in order to keep up with demands. *Id.*

21. TOWERS PERRIN & HUDSON INSTITUTE, *supra* note 14, at 4.

22. JOHNSTON, *supra* note 11, at 95-103.

23. *Id.*

24. *Id.*

25. *Id.* at 98-99.

26. It is estimated that over the next decade approximately one million new jobs will be created in the less-skilled and 'laborer' categories. CETRON & DAVIES, *supra* note 1, at 353.

27. Johnston, *supra* note 11, at 98-99.

28. *Id.*

29. Bill Kendall, *Selected Colorado Trends, Report to Vision 2020: Colorado Courts of the Future 2* (Mar. 14, 1991). See Reid Reynolds & Jim Westkott, *Colorado's Changing Workforce, Report from the Colorado Division of Local Government 2* (Oct. 1988).

30. See Emily Mitchell, *Do the Poor Deserve Bad Schools?*, TIME, Oct. 14, 1991, at 60. "[T]he U.S. has created a caste system of public education that is increasingly separate and unequal." *Id.*

31. The U.S. high school drop out rate is 25 percent (23 percent in Colorado); the

gle of those groups to achieve economic parity with Whites will be further restricted.

Educational reform continues to be a priority on both local and national political agendas.³² Poor test scores and budget concerns will prompt calls for radical reform.³³ Private firms will challenge public schools to utilize technological advances in education, but experimental programs may use up scarce resources, resulting in delayed reform.³⁴ Programs that replace textbooks with computers and databases will be the most effective means of keeping pace with rapid technological changes. However, the inability of education to keep pace with the changing demands of the workplace could create an even clearer stratification of society. The potential is that within thirty years, possession of marketable work skills could become the most notable distinction in the separation of economic classes.

Impact Upon the Courts. The economic polarization caused by the skills gap will increase civil disputes through continued increases in cases caused by economic tension in society. Criminal courts will be more greatly affected.³⁵ Of particular concern is the potential for civil violence as rebellious "have nots" vent their frustrations against economic "haves" and seek economic redress.³⁶ With fewer government funds available for social service, and with prisons already teeming, more law abiding people will be victimized.³⁷

Deficiencies in education also affect crime rates.³⁸ If the underprivileged are not better educated and given better opportunities, the courts may be faced with an entire class of criminals for whom the laws of society represent a conspiracy to maintain power. The growing numbers of urban youth gangs perhaps represent the precursor to this. Dispropor-

dropout rate for Blacks is estimated at 40 percent, and for Hispanics it is estimated at 50 percent. Forty-one percent of minority youth are thought to be functionally illiterate. *Youth 2000 Task Force, supra* note 17, at 2.

32. CETRON & DAVIES, *supra* note 1, at 346-47.

33. *Id.* at 349-50.

34. *Id.* at 348.

35. Few would argue that the principal clients of the criminal justice system are those who occupy the lower economic strata of our society. Offenders and victims have always tended to be young, male, Hispanic and Black, illiterate, and unemployed Consequently, as the number of persons who experience severe economic and social condition increases, we can expect further increases in crime.

Austin, *supra* note 8, at 4.

36. John Bennett, *Is There Violence In Our Future?*, ROCKY MOUNTAIN NEWS, Dec. 27, 1990, at 4. Currently the U.S. is experiencing fundamental changes in the socio-economic structure of society. At the same time, there has been a rise in correctional populations and their associated cases. Austin, *supra* note 8, at 1.

37. Austin, *supra* note 8, at 6. "In economic terms, America is becoming a more fragmented and segregated society. Should these trends persist, there will be an associated increase in the incidence of crime and other social problems." *Id.* See Alex Prud'homme, *Chicago's Uphill Battle*, TIME, June 17, 1991, at 30.

38. Professor Lawrence Mead of New York University has noted that many ghetto Blacks have responded to their dilemma by "seceding from mainstream institutions—breaking the law, dropping out of school, not learning English [and] declining to work." George Will, *A Sterner Kind of Caring*, NEWSWEEK, Jan. 13, 1992, at 68.

tionate school dropout rates of minorities have played a strong role in the high poverty levels of those groups. The growing demand for technical skills in the workplace may make the failure to educate minority youths even more troublesome.³⁹ Additionally, changes in the education system brought about by louder calls for immediate reform, will attract litigation from parents who are unhappy with how the changes affect their children as well as from educational workers hurt by the reforms.⁴⁰

B. *Increased Diversity*

The composition of the workforce will have increasing proportions of women, minorities and immigrants.⁴¹ It will also be an aging workforce, with many older workers desiring or needing to extend their working life.⁴² Consequently, the traditional concept that education ends when a person enters the workforce will be replaced by the realization that older workers must be retrained.⁴³ Further, the educational system will be faced with the challenge of teaching more diverse students.⁴⁴

Growing diversity in the workforce will create several potential conflicts. The increase in numbers of aging workers and women will multiply disputes over health care benefits.⁴⁵ Businesses will feel the burden of paying the cost for advances in medical technology through worker benefits.⁴⁶ Worker productivity will also be challenged to keep this diversity working together. The changes may bring about the potential for continued discrimination in hiring, pay and promotion opportunities as well as the possibility for social tension as threatened White males react to their declining power base.⁴⁷ As a result, the harassment of

39. Austin, *supra* note 8, at 6.

40. Mitchell, *supra* note 30, at 61. "[M]any students from low-income families are in schools where they are not encouraged to take rigorous academic courses or the courses are just not offered." Anthony DePalma, *Coaching Courses Hike SATs, Report Finds*, DENV. POST, Dec. 18, 1991, at 2A.

41. "Women, minorities, and immigrants will account for more than 80 percent of the net additions to the labor force between now and the year 2000." *Youth 2000 Task Force*, *supra* note 17, at 2.

42. The growth rate for participation in the work force by civilians age 55 and older was -1.0 percent between 1976-1988. Between 1988-2000 the growth rate is projected to increase to .2 percent. Fullerton, *supra* note 15, at 5.

43. "The shrinking pool of entry-level employees, combined with the mounting skills crisis among them, is already forcing many corporations to undertake in-house training efforts or even outreach programs into their communities." Ehrlich, *supra* note 5, at 154.

44. Barbara Kantrowitz, *A Is for Ashanti, B Is for Black . . .*, NEWSWEEK, Sept. 23, 1991, at 45.

45. JOHN NAISBITT & PATRICIA ABURDENE, *MEGA TRENDS 2000* 230 (1990).

46. Merian Kirchner, *Who Pays For New Technology?*, BUS. & HEALTH, Oct. 1991, at 25. A 1989 survey by the National Association of Manufacturers found that the cost of providing health benefits already represented 37.2 percent of the average member's profits. Joyce Frieden, *Many Roads Lead to Health System*, BUS. & HEALTH, Oct. 1991, at 58.

47. Several new books argue that instead of racial hatred per se, white males fear that affirmative action will channel jobs to minorities and women. Howard Fineman, *Playing White Male Politics*, NEWSWEEK, Oct. 28, 1991, at 27.

women and minorities in the workplace will continue to be monitored.⁴⁸ The need to attract mothers to the workplace should force businesses to deal with problems of combining family roles with work assignments.⁴⁹ Day care and elder care, for example, may become essential components of a benefits package.⁵⁰ Socially, the increased economic status of women will reduce birth rates and impact divorce and marriage rates.⁵¹

Impact Upon the Courts. With more women and minorities entering the workplace, the courts can expect to face an increase in cases concerning equal opportunity and treatment. Victims of job-related discrimination may seek redress in the courts as diverse cultural and ethnic groups are forced to work together in the workplace. Nevertheless, workplace discrimination will persist, perpetuating disproportionate poverty levels among minorities.⁵² Higher poverty among minorities will increase crime. Workers will be willing to question discriminatory terminations,⁵³ and the courts may also be faced with aggressive counter reactions by Whites to hiring quotas and equal opportunity programs.⁵⁴ Aging workers, confronted with economic concerns and better general health, may react to forced retirements with litigation.

More complex health benefit packages, needed to attract women and high caliber workers, will likely increase liability claims and disputes over coverage.⁵⁵ Other indirect issues resulting from increased workforce diversity will no doubt include divorce, parental responsibilities in childcare and spousal abuse. As working women continue to change the "traditional" family structure, society's dependence on them as the principal parent for children will increase the numbers of family cases.

Educational reactions to increasing diversity will be met with disputes concerning equal rights. Minority parents whose children suffer from unequal opportunities because of insensitive teaching practices or policies will pursue their cause in court.⁵⁶ Tension may mount regarding equal opportunity programs that favor minority status as economic hardships increasingly affect the White middle class majority. Curriculum or testing changes designed to make education more accessible to

48. Ted Gest & Amy Saltzman, *Harassment: Men On Trial*, U.S. NEWS & WORLD REP., Oct. 21, 1991, at 38.

49. CETRON & DAVIES, *supra* note 1, at 356.

50. "With most middle-age women in the paid work force, 'eldercare' will be a hot corporate benefit right alongside child care." Ehrlich, *supra* note 5, at 142.

51. CETRON & DAVIES, *supra* note 1, at 370.

52. Paul R. Krugman, *Economic Outlook: The Painful Cost of Workplace Discrimination*, U.S. NEWS & WORLD REP., Nov. 4, 1991, at 63.

53. Richard Johnson, *Most Age-Discrimination Charges will be pursued, EEOC Says*, DENV. POST, Dec. 3, 1991, at 1E. See Melinda Beck, *Old Enough to Get Fired . . .*, NEWSWEEK, Dec. 9, 1991, at 64.

54. Fineman, *supra* note 47.

55. Attractive benefit packages, particularly health care for employees and their dependents, are the backbone of corporate strategies to fill the labor shortages. Jayne Morehouse, *High Turnover Anxiety*, BUS. & HEALTH, Oct. 1991, at 96.

56. See Jerry Adler, *African Dreams*, NEWSWEEK, Sept. 23, 1991, at 42; Ehrlich, *supra* note 5, at 144.

diverse groups will be disputed in court by conservative parents who feel that these changes sacrifice their children's educational rights. As social diversity grows and economic hardship increases, the role that education plays in enforcing ethnic and social division will come under scrutiny by the courts.

C. Organization

Structural changes in education will occur both in the way people work and the manner in which students are educated. In the workplace, home-based workers, flexible and part-time schedules and the numbers of self-employed workers will increase.⁵⁷ The employer-employee relationship will also be affected as traditional employer supervision becomes balanced with employee initiative. In education, the inability of the current system to keep pace with foreign competitors will prompt organizational changes in education.

One organizational change within the workforce is the decline of labor unions.⁵⁸ Because of the continued shift away from industrial jobs where labor unions have traditionally thrived, the percentage of union workers in the workforce will decline. The lack of labor representation within many service industries is related to the multiple career changes many workers face. The traditional notion of working an entire career with the same company has been replaced by a desire to minimize forced career changes.⁵⁹ Job instability will continue through a worker's career as businesses continually move to streamline their operations.⁶⁰ The result is: many aging baby boomers will find themselves fired from jobs from which they expected to retire.⁶¹ In addition to management efficiency, companies concerned with huge expenditures in worker's pensions will see the necessity of terminating long-time employees.⁶² Businesses will need to scale back operations by laying off workers, while facing a shortage of skilled laborers. Although businesses will compete fiercely for top workers, those employees will compete just as fiercely for those jobs.⁶³ Along with the need to reduce pension and benefit expenses paid to older workers, the trend of businesses downsizing their

57. "The number of people who work at home is projected to nearly double by 2000, from 30 million in 1990 to 56 million in 2000." Jo Ann Tooley & Amy Bernstein, *Measures of Change*, U.S. NEWS & WORLD REP., Dec. 25, 1989, at 6-7. See Bruce A. Taylor, *Innovations in the Information Age*, HUM. CAP., Nov. 1990, at 34.

58. "Only one in eight young men with blue-collar jobs belongs to a labor union; 20 years ago that number was three times as high." Marc Levinson, *Living on the Edge*, NEWSWEEK, Nov. 4, 1991, at 25. See CETRON & DAVIES, *supra* note 1, at 358.

59. See, e.g., NAISBITT & ABURDENE, *supra* note 45, at 221. "The average American entering the work force today will change careers three times according to the Labor Department. Private experts tell people to count on five different careers." *Id.*

60. CETRON & DAVIES, *supra* note 1, at 362. See Dorrie Jacobs, *Dealing With the Downsizing Dilemma*, HUM. CAP., Nov. 1990, at 20.

61. Gene Del Vecchio, *A Question of Loyalty*, NEWSWEEK, Sept. 23, 1991, at 8.

62. Steven Findley, *A Blow To Your Benefits*, U.S. NEWS & WORLD REP., Oct. 21, 1991, at 100. "Some of the most tempting targets for layoffs are older, highly paid employees." Beck, *supra* note 53, at 65.

63. CETRON & DAVIES, *supra* note 1, at 361.

management teams will continue. The traditional ladder of advancement will be eliminated, and middle management level workers may see narrow possibilities for promotion and increased job competition.⁶⁴

The elimination of middle management positions will occur simultaneously with the bifurcation of job opportunities. The lack of jobs traditionally filled by the middle class could sharply effect society, the economy and family structures.⁶⁵ As management level workers lose their jobs, the majority of work opportunities will be in areas for which they are overqualified—jobs requiring minimal education and offering meager responsibility or opportunity for advancement. A significant number of today's middle class will fall into poverty, while the highly skilled workers will continue to thrive.⁶⁶

Impact Upon the Courts. Organizational changes occurring in education and labor will continue to affect the courts. As businesses attempt to streamline operations and cut costs, the courts will see growing numbers of wrongful termination suits involving employees' lost pension funds. Working without the protection of a union, people will turn to the courts to resolve employer-employee disputes.⁶⁷ Union decline will also exacerbate economic stratification.⁶⁸ Such economic polarization will lead to significant increases in the number of impoverished people impacting the criminal system. The overburdened courts will respond to the demands of a surge in criminal cases.⁶⁹

Courts may also need to resolve disputes involving job safety for off-site workers and pay equity issues for part-time workers. Increased international trade in goods and service and more foreign ownership of U.S. based companies will create work organization dispute and may create even greater stresses upon national and local economies.⁷⁰

Within education, changing structures will increase disputes between those eager to enact reforms and those hesitant to abandon tradition. Because of the importance that society places upon education, much of the tension caused by changes in the workforce and the econ-

64. *Id.* See Del Vecchio, *supra* note 61, at 8.

65. "After wave upon wave of corporate restructurings and downsizings, even seemingly well-situated families don't feel secure." Levinson, *supra* note 58, at 25.

66. The current recession has significantly hit the middle class. Nearly 600,000 of the lost jobs belong to middle managers and other white-collar workers as companies slash payrolls because of "slow sales, crushing interest charges and tough foreign competition." John Greenwald, *A Slump That Won't Go Away*, TIME, Oct. 14, 1991, at 42-43.

67. Findley, *supra* note 62, at 100.

68. Harvard economist Richard Freeman reckons that the weakening of labor unions accounts for one-fifth of the increase in the wage gap since 1978." Levinson, *supra* note 58, at 22.

69. The system is overburdened in at least two aspects—delay and prison overcrowding. The ABA standard for criminal dispositions is 100 percent of cases disposed in one year. Craig Boersema, *Report to Task Force 3, Vision 2020: Colorado Courts of the Future, Civil Litigation and Alternative Dispute Resolution* (Sept. 1991). See U.S. DEPARTMENT OF JUSTICE, BUREAU OF JUSTICE STATISTICS BULLETIN (May 1990). The prison population has more than doubled from 329,821 in 1980, to 703,687 at the close of 1989, an increase of 113.4 percent. *Id.*

70. Levinson, *supra* note 58, at 24.

omy will be focused upon the weaknesses of the public system. As concern and strain grow, the courts will remain an outlet for dissension.

D. *Content*

Changes are expected in the nature of the work much of the labor force will perform because of the growth of information/knowledge industries and trade and service industries. Changes are also occurring in the field of education. Accessing information to teach technical problem solving skills will force a shift in traditional teaching curricula.

Technological advances will also dramatically influence the workforce in the next thirty years. Society is experiencing an information explosion made possible by quantum advances in technology.⁷¹ With these advances, work will be completed more efficiently and less expensively.⁷² Because of the influx of information, professionals of all fields are being forced to specialize their expertise.⁷³ This specialization movement concerns some who feel that people will become disassociated from control of society.⁷⁴ Technology also represents an opportunity for productivity to increase.⁷⁵ Nevertheless, a concern is that its impact may not be as economically effective as previous production gains—while technology can increase productivity, it may be at the expense of the laborers. As more workers are replaced by technology, the greatest reward of higher production could go to business owners, while the workforce could remain unaffected.⁷⁶

The shift from an industrial to a service-related economy may result in a lower standard of living for many in the workforce.⁷⁷ The movement to service sector jobs will present two types of opportunities. First, there will be a surplus of jobs that demand highly skilled and specialized workers. Businesses will aggressively compete for the relatively small number of laborers qualified to fill those positions.⁷⁸ Second, another surplus of jobs will appear in positions where minimal education is re-

71. House, *supra* note 1, at 5.

72. John Schwartz, *The Highway to the Future*, NEWSWEEK, Jan. 13, 1992, at 56.

73. "Within professions (medical, legal, engineering, etc.) the body of knowledge that must be mastered to excel in a particular area precludes excellence across all areas." CETRON & DAVIES, *supra* note 1, at 352.

74. *Id.* at 354.

75. *Id.* at 331. "Economic growth will continue as technological gains in the manufacturing sector boost productivity, and as slow growth in the labor force is offset by workers who remain in the labor force." *Id.* See Ehrlich, *supra* note 5, at 142.

[T]he 90s could turn out to be a period of extended economic prosperity. The baby boom generation . . . is reaching peak productivity. And with the growth rate of the work force falling to one percent per year, the lowest since the 1950s, employers won't have to absorb and train a flood of new workers as they have for 20 years. That frees resources to make current workers more effective.

Id.

76. Schwartz, *supra* note 72, at 57. "Without proper planning, network expansion could widen the gap between rich and poor. The vast educational resources might only go to the data-haves—such as computer owners—leaving the poor behind . . ." *Id.*

77. "Service jobs have replaced the many well-paying jobs lost in manufacturing, transportation, and agriculture. Low-paying and often part-time, these new jobs pay wages at half the level of manufacturing jobs." CETRON & DAVIES, *supra* note 1, at 353.

78. Del Vecchio, *supra* note 61, at 8.

quired.⁷⁹ Advancement opportunities will be scarce in these jobs. Traditional jobs in mining, construction and manufacturing that account for more than one in six jobs in today's Colorado economy will be displaced. They will provide for fewer than one in twenty of the new jobs in the next twenty-five years.⁸⁰

Educational systems will be evaluated by their ability to teach measurable technical skills.⁸¹ The focus upon evaluating educational content will turn parents' attention toward those factors. The preliminary result will be that financially empowered parents will be able to respond to the change and grant their children a head start in becoming successful in changing society. Education reformers will rely on technology to increase the productivity of educators. However, the business sector will take advantage of these new technologies before the public education system is able to do the same. Further, other countries may be able to adapt their educational systems more quickly to the emerging demands of the global market.

Impact Upon the Courts. The shift in work content caused by information and technology industries will affect the courts in several ways. Civil rights principles and right to privacy issues will be repeatedly disputed.⁸² Particularly volatile issues will be those theoretical and philosophical ones that society has not yet resolved.⁸³ These issues may present opportunities to enjoin communities and raise the tolerance for diversity. The concern remains, however, that society's inability to come to agreement on fundamental values will make the introduction of many new technologies difficult.

The management and operation of the courts will also be affected by information and technology. Increased information can address weaknesses in judicial services in areas such as access and communication. Improved access to information could eliminate the monopoly on legal information held by attorneys. As a result, it may be possible that some legal decisions will be made by non-attorneys.

III. GENDER, FAMILY AND RACE ISSUES

Both women and non-Anglo ethnic groups face particularly unique challenges in American society, and issues concerning these groups will

79. *Youth 2000 Task Force*, *supra* note 17, at 2-3. Because of a shrinking labor pool of 16-24 year-olds, there will be a demand for workers to fill entry level positions. *Id.* See CETRON & DAVIES, *supra* note 1, at 353 & 360.

80. Kendall, *supra* note 29, at 3.

81. Kantrowitz & Wingert, *supra* note 18, at 51.

82. See Richard Zoglin, *Justice Faces a Screen Test*, TIME, June 17, 1991, at 62; Joe Schwartz, *Educating Away Privacy Fears*, AM. DEMOGRAPHICS, Sept. 1991, at 47. "Communication networks offer the promise of more personalized media and widespread telecommuting, but they also threaten individual privacy and increase the potential for information discrimination." Scott Cunningham & Allan Porter, *Communication Networks: A Dozen Ways They'll Change Our Lives*, THE FUTURIST, Jan.-Feb. 1992, at 19.

83. Lance Morrow, *When One Body Can Save Another*, TIME, June 17, 1991, at 54. "Technology is developing so rapidly that new practices are outpacing society's ability to explore their moral implications." *Id.* at 56.

continue to mark a trend toward equalization and cultural diversity. Principles of equality may influence the next twenty years more than any epoch since the Civil War. Uniquely tied to the changes that the assertion of women and minorities' rights will bring in the future is the role of the family. How family, gender and race issues evolve over the next thirty years will form the basis for the American community in the year 2020, and the courts will be asked to play a vital role in shaping this development.

A. Gender

Economically, women are confronted with distinctive challenges and hardships because of disparate pay scales. Women also face unequal opportunities not only in acquiring certain positions, but in advancing to executive and supervisory positions. As more women move into the workforce, the makeup of the family will continue to change, and attention will be paid to the disproportionate burden of divorce and single-parenthood upon women. As women assert a redefined role in the community, more energy will be spent on eliminating the obstacles that prevent them from accessing leadership and management positions in society.

The woman's changing role will greatly affect the workplace.⁸⁴ As women become an equal percentage of the workforce, the disparity between their incomes and the incomes of men will continue to be a point of contention.⁸⁵ A report by the National Committee on Pay Equity concludes that the wage gap is one of the major causes of economic inequality, and that discrimination is the cause.⁸⁶ In 1981 the National Academy of Sciences found that less than twenty-five percent of the wage gap is due to differences in education, labor force experience and commitment, suggesting that wage differences are primarily gender based.⁸⁷ In 1985, the United States Bureau of the Census reported that differences in education, labor force experience and commitment accounted for less than fifteen percent of the wage gap between women and men.⁸⁸

Women are also limited in their opportunity to pursue different professions. Although women have entered male-dominated occupations in increasing numbers, they nonetheless remain concentrated in traditional clerical and service occupations.⁸⁹ The opportunity to ad-

84. Nationally, men will remain a majority of the labor force, but when growth rates are compared, the male labor force is projected to grow by only 11 percent over the 1988-2000 period, compared with a projected growth of 22 percent for women during the same period. Fullerton, *supra* note 15, at 7.

85. Women still earn on an average 60-70 percent of what men typically earn. *Workforce 2000 and Beyond: Jobs and Workers for Colorado's Future*, THE ADVOCATE, Apr. 1989, at 8.

86. PAULA S. ROTHENBERG, *RACISM AND SEXISM: AN INTEGRATED STUDY* 71 (1988).

87. *Id.* at 73.

88. *Id.*

89. *Report of the Commission of Women in the Profession: Part 1*, THE BUS. LAW. UPDATE, Sept.-Oct. 1988, at 6, 7. In 1986, women were only 4.4 percent of all dentists, 6.0 percent

vance to leadership positions will remain limited by the "glass ceiling" phenomenon.⁹⁰ As with the wage gap disparity, this reality will be the focus for reform.

Another cause of the "stunted" economic status of women is the values that society continues to impose on them. Despite the massive influx of women into the workforce through the 1970s and 80s, many still perceive that women should obtain their professional status while at the same time remaining at home to raise children.⁹¹ Working women are also expected to be the primary parent.⁹² However, as the trend of independence continues through the turn of the century, traditional values will fade and the family structure of the 1950s will become a relic.⁹³ Working women will still take the lead in establishing child care opportunities, however, and while the demand for such care has dramatically increased, child care of acceptable quality remains difficult to find or afford.⁹⁴

The issues of economic inequality are compounded by divorce. Single parent women suffer poverty in disproportionate numbers because of the failure of fathers to adequately support children.⁹⁵ Although the average Aid to Families with Dependent Children (AFDC) payment to a family of four rose approximately fifty-two percent between 1974 and 1988, prices almost doubled during the same period, causing single-parent women to experience a real decline of more than twenty-five percent in their financial resources.⁹⁶ Even women without dependent children are disadvantaged by divorce. The consequences of divorce are worse financially for many women because they tend to lack adequate marketable skills—a consequence of their position as homemaker during the marriage.⁹⁷

of all engineers, 18.1 percent of all lawyers and judges, 4.8 percent of all police and detectives, and 17.6 percent of all physicians. In the same year, however, women comprised 99 percent of all clerical workers, 94.3 percent of all registered nurses, 96.5 percent of all child care workers, 87.9 percent of all telephone operators, 85.2 percent of all teachers (excluding colleges and universities), and 91.1 percent of all data entry operators. ROTHENBERG, *supra* note 86, at 69-70.

90. SARAH HARDESTY & NEHAMA JACOBS, SUCCESS AND BETRAYAL: THE CRISIS OF WOMEN IN CORPORATE AMERICA 209 (1986); See Carol Hymowitz & Timothy D. Schellhardt, *The Glass Ceiling: Why Women Can't Seem to Break the Invisible Barrier that Blocks Them from the Top Jobs*, WALL ST. J., Mar. 24, 1986, § 4.

91. ROTHENBERG, *supra* note 86, at 70.

92. Martha Fineman, *Dominant Discourse, Professional Language, and Legal Change in Child Custody Decisionmaking*, 101 HARV. L. REV. 3, 43 (1988). "In most marriages, one parent, normally the mother, assumes day-to-day primary care." *Id.*

93. Jo Ann Tooley & Amy Bernstein, *Measures of Change*, U.S. NEWS & WORLD REP., Dec. 25, 1989, at 6.

94. "The nation's child-care centers are increasingly crowded and supervision is declining, depriving millions of children of attention they need at a critical age. Since the 1970s, enrollment at childcare centers has increased four-fold." Janet Bingham, *Child Care Centers 'Overcrowded, Understaffed'*, DENV. POST, Nov. 8, 1991, at 1A.

95. CENSUS, *supra* note 13, at 459, 462. Between 34 percent and 45 percent of families with a female householder, no husband present, were below the poverty level in 1987. *Id.*

96. See ROTHENBERG, *supra* note 86, at 81.

97. COLORADO SUPREME COURT TASK FORCE ON GENDER BIAS IN THE COURTS, GENDER & JUSTICE IN THE COLORADO COURTS 13 (1990) [hereinafter GENDER BIAS].

Women suffer most disproportionately in terms of violence.⁹⁸ It is estimated that one-quarter to one-third of married women experience serious violence in their homes, and some studies estimate the number as high as seventy percent.⁹⁹ Some form of violence happens in one-fourth of all marriages.¹⁰⁰ One woman is raped in America every six minutes.¹⁰¹ Approximately two-fifths of women have been sexually molested by a member of their family, and over one-third of women have been raped.¹⁰²

The failure of society to regard the physical protection of women as a fundamental right has just begun to change.¹⁰³ Although women will continue to insist this victimization cease, the tendency of males to respond to female independence with violence seems likely to persist.

Impact Upon the Courts. With more women moving into the workforce, there will be an escalating focus on women and workplace issues, such as sexual harassment.¹⁰⁴ Unequal workplace issues such as disparate wage practices will be individually litigated through the judicial system.¹⁰⁵ Scarce and inadequate child care will also be treated as a rights issue affecting women disproportionately.

Gender issues will also greatly impact family law. The disparate financial impact of divorce will lead to alternatives that protect women and their families to a greater degree.¹⁰⁶ The courts' participation in the feminization of poverty will also be a major target of reformers. Many feel the judicial system's inability to adequately enforce child support payments has played a major role in the institutionalization of juvenile delinquency and the poverty of single mothers. Finally, as more women become political leaders, violence against women should become a priority in the judicial system.

B. Families

The fundamental institution of American society is the family, from which each generation learns the values and behavior it will assume. The family, as an institution, is undergoing massive restructuring. The number of families living in poverty is also a major concern, as the im-

98. See Robert Prentky & Ann W. Burgess, *Rehabilitation of Child Molesters: A Cost-Benefit Analysis*, 60(1) AM. J. ORTHOPSYCHIATRY 108, 114 (1990).

99. See CATHERINE A. MACKINNON, *FEMINISM UNMODIFIED: DISCOURSES ON LIFE AND LAW* 24 (1987).

100. *Id.*

101. *Id.* at 23.

102. *Id.* See BARRY M. MALETZKY, *TREATING THE SEXUAL OFFENDER* 222 (1991).

103. Eloise Salholtz, *Sex Crimes: Women On Trial*, NEWSWEEK, Dec. 16, 1991, at 22.

104. Annetta Miller & Dody Tsiantar, *Mommy Tracks*, NEWSWEEK, Nov. 25, 1991, at 48. See, e.g., *Ellison v. Brady*, 924 F.2d 872 (9th Cir. 1991). In *Ellison*, the Ninth Circuit Court of Appeals held that in determining whether sexual harassment is sufficiently severe to be actionable, the court should focus on the female victim's perspective, and not a man's point of view (i.e., the reasonable woman standard versus the reasonable man). *Id.*

105. Vicky Cahan, *Women At Work*, BUS. WEEK, Jan. 28, 1985, at 80, 82.

106. Statistics show that nine out of ten men granted joint custody or visitation rights pay only some child support. *Half Of All Child Support Payments Fall Short, Census Finds*, DENV. POST, Oct. 11, 1991, at A13.

pact of financial hardships continues to burden the courts.¹⁰⁷ Another consideration for the judiciary is the victimization of families by crime. With society so dependent upon the family's ability to maintain order and happiness, the lack of protection that many families experience bears a significant impact.

The decline of the "traditional family" (i.e. dual spouse, single wage earner) is the most notable transition occurring. The number of single-headed households increased during the 1980s.¹⁰⁸ In 1960, sixty-one percent of households were single wage-earner, traditional families. Today that figure is twenty-two percent.¹⁰⁹ With more children being placed in child care, many people are concerned about how current and future generations of children will be raised.¹¹⁰ The family role of teaching values and providing a sense of community to children will be transferred to churches and schools.¹¹¹ Traditional families will consist of fewer children,¹¹² and several "generations of" family members may live under the same roof.¹¹³

The need for dual parent incomes to accommodate even a minimally comfortable lifestyle will result in more single parent families living in poverty.¹¹⁴ As income inequality continues to increase through the year 2000, two income families will increase, while single parent households will fall further behind.¹¹⁵ Nearly one-third of all children were living below poverty in 1990,¹¹⁶ and the numbers of children who are growing up poor will affect the criminal courts through an increase of cases. An underclass of impoverished children presents an even greater variety of concerns, however.¹¹⁷ Economics play a critical role in a child's future, and the lack of opportunities facing children at the lower end of the economic scale is a considerable family and societal

107. Austin, *supra* note 8, at 4. Between 1980 and 1988 the number of persons living in poverty increased from 26 million to 32 million, a 23 percent increase. *Id.*

108. Austin, *supra* note 8, at 4. The number of single parent families increased from 22 percent in 1980 to 27 percent by 1988. *Id.*; CETRON & DAVIES, *supra* note 1, at 372. See Barbara Kantrowitz, *Breaking the Divorce Cycle*, NEWSWEEK, Jan. 13, 1992, at 48.

109. Martha F. Riche, *The Future of the Family*, AM. DEMOGRAPHICS, Mar. 1991, at 44.

110. "We as a society will pay the cost in children who are not prepared to function effectively later—either socially or in school. Skills gained in the preschool years are the foundation for all learning that follows in school and in life." Bingham, *supra* note 94, at 1A.

111. See Taylor, *supra* note 57, at 37 (noting that schools have been enforced to assume the role of parenting).

112. See CETRON & DAVIES, *supra* note 1, at 369.

113. See *Outlook '90*, THE FUTURIST, July-Aug. 1989, at 39.

114. See CETRON & DAVIES, *supra* note 1, at 372. Between 1970 and 1980 the proportion of families in poverty who were maintained by women rose from 36 percent to 50 percent—a net increase each year of approximately 100,000 families. ROTHENBERG, *supra* note 86, at 80.

115. *Children of Divorced Snubbed*, ROCKY MOUNTAIN NEWS, May 4, 1991, at 7.

116. Richard Thomas, *Middle-Class Blessings: Another View*, NEWSWEEK, Nov. 4, 1991, at 25.

117. Jean Seligmann, *An 'F' for the Nation's Kindergartners*, NEWSWEEK, Dec. 16, 1991, at 59. More than a third of all children aren't ready to learn when they start school. The president of the Carnegie Foundation for the Advancement of Teaching says that largely because of poverty too many children "are already shockingly restricted even before their first formal lesson." *Id.*

concern.¹¹⁸

Crime will substantially threaten family living. Approximately one in every four households will be victimized by at least one crime of violence or theft each year.¹¹⁹ Accompanying the detrimental effects of the victimization itself is the perception that the judicial system does not offer families any protection from crime. A general mood of societal insecurity is neither a credit nor a benefit to the courts. Questions also exist about the ability of the judicial system to constructively deal with juveniles. Studies indicate that current treatment simply habituates adult criminal behavior and that alternative sentencing may be more appropriate.¹²⁰

Inter-family crime is also particularly destructive. Over two million children were reported abused in 1987.¹²¹ These reports, however, offer only a fraction of the actual abuse occurring. Especially in cases of sexual abuse, it is difficult to determine whether such abuse is on the rise.¹²² Although the numbers may vary, it is evident that a significant number of children are being victimized.¹²³

Impact Upon the Courts. If the concerns of some sociologists are justified, changing family structure will lead to more disputes in the future.¹²⁴ The disproportionate ethnic breakdown of juvenile offenders correlates to ethnic economic levels, suggesting that poverty plays a large role in delinquency.¹²⁵ Criminal courts should anticipate more cases, as a significant percentage of children move into adulthood with minimalized opportunities.¹²⁶

The failure of the justice system to adequately protect families from

118. ROTHENBERG, *supra* note 86, at 55-56. Economic status, rather than brains, predicts a child's future. *Id.*

119. See generally ARTHUR J. LURIGIO, WESLEY G. SKOGAN & ROBERT C. DAVIS, *VICTIMS OF CRIME: PROBLEMS, POLICIES, AND PROGRAMS* (1990).

120. See James Austin & Barry Krisberg, *The Unmet Promise of Alternatives to Incarceration, CRIME AND DELINQUENCY*, July 1982, at 374-409. "The effectiveness of [an eye for an eye] for the redress of wrong doing has its limitations Those of us who have acquired some expertise in modifying behavior, whether we are parents, teachers or therapists, appreciate the liabilities of wanton punishment in effecting long-term behavioral change." Prentky & Burgess, *supra* note 98, at 115.

121. Christine Gorman, *Incest Comes Out of the Dark*, *TIME*, Oct. 7, 1991, at 46, 47. It is estimated that perhaps 80 percent of the 200,000-360,000 cases of child sexual abuse that occur each year involve incest. "Surveys in California and Massachusetts in the 1980s found that as many as 1 in 5 girls and 1 in 7 boys under the age of 18 had been sexually abused by a relative—anyone from a father to a mother or an in-law." *Id.*

122. *CENSUS*, *supra* note 13, at 176.

123. Prentky & Burgess, *supra* note 98, at 114. "Perhaps the most critical hidden impact is the suspected cyclic perpetuation of child sexual abuse. While it may be overly simplistic to conclude that abuse necessarily begets abuse, the link between sexual abuse at an early age and inappropriate sexual conduct in adulthood has been frequently noted." *Id.*

124. Regarding the changing structure of the family, Johns Hopkins sociologist Andrew Cherlin says that "[w]e're in the midst of a huge social experiment. We don't know what the long-term effects will be." Kantrowitz, *supra* note 108, at 49.

125. In 1987, the nonwhite delinquency case rate (68.1 percent) was 75 percent greater than the White rate (38.8 percent). U.S. Dep't. Just., *Juvenile Justice Bulletin: OJJDP Update on Statistics*, July 1991, at 4.

126. RICHARD LAMM, *MEGATRAUMAS: AMERICA AT THE YEAR 2000 84-89* (1985).

crime will also persist. Resulting public unrest will put more pressure on the courts. Alternatives to protection by the police and the judiciary will be private security and citizen responses, the legality of which may be challenged in courts.¹²⁷ Every class will feel the effect of having to seek protection from criminal victimization, resulting in a society that feels unprotected, apprehensive and unsettled.¹²⁸

C. Racial and Ethnic Groups

Minority racial and ethnic groups are also expected to fight for rights long kept from them. Like women, minorities will constitute a growing proportion of the workforce. Similarly, they will continue to face a conspicuous gap in wages. The disproportionate percentage of lowerclass minorities will continue to rise, raising concerns and tensions. Particular attention should be directed at the causes of the disparate participation rates in the criminal justice system. Minorities will exert more political influence as the population of Blacks, Hispanics, and Asians increases to 23-28% by 2000.¹²⁹ During the 1980-1990 period, the nation's minority group populations increased nearly five times the rate of the Anglo population.¹³⁰ Similarly, while Anglos are still expected to maintain a nearly four-to-one majority in the workforce by the year 2010, increases in the numbers of minorities will trigger changes in workforce composition.¹³¹ Both Blacks and Hispanics continue to enter the workforce at faster rates than Whites.¹³² Between 1988 and 2000, the minority workforce is expected to grow at three times the rate of the Anglo workforce.¹³³ These demographic changes promise to bring about modifications in the White-dominated status quo, changes that could increase disputes over unfair labor practices. Part of the conflict will come from Whites reluctant to give up power and control, making the transition potentially turbulent.¹³⁴

Accompanying the influx of minorities into the workforce is a signif-

127. See generally BRUCE L. BENSON, *THE ENTERPRISE OF LAW: JUSTICE WITHOUT THE STATE* (1990).

128. See *supra* note 127.

129. CETRON & DAVIES, *supra* note 1, at 337.

About 20 million people of Latin American background now live in the U.S. In the 1980s, their numbers have grown five times as fast as the non-Hispanic population. High levels of immigration and high birthrates are expected to keep that growth going well into the next century. Hispanics, now 8 percent of Americans, may be the largest ethnic minority by 2015, surpassing blacks.

Ehrlich, *supra* note 5, at 144.

130. CENSUS, *supra* note 13, at 14-16. By 2010, minority groups will comprise 30 percent of the national population. *Id.* at 14-15.

131. CETRON & DAVIES, *supra* note 1, at 357. See also TOWERS PERRIN & HUDSON INSTITUTE, *supra* note 14, at 1. "The proportion of blacks in the labor force is projected to rise to 12 percent by 2000, compared with 10 percent in 1976 and 11 percent in 1988. Hispanics are projected to increase their share of the labor force from 7 percent in 1988 to 10 percent by 2000." Fullerton, *supra* note 15, at 3.

132. Fullerton, *supra* note 15, at 4.

133. *Id.*

134. Scott Minerbrook & Miriam Horn, *Side By Side, Apart*, U.S. NEWS & WORLD REP. Nov. 4, 1991, at 44.

icant gap in their earnings compared to earnings of White workers.¹³⁵ In 1985, Black and Hispanic men who worked full-time had average earnings of \$17,479, while the average salary for a White man was \$25,062.¹³⁶ The disparity for minority women is even greater. The average full-time salary for White women in 1985 was \$15,796; for Black women it was \$14,308; and for Hispanic women it was \$13,066.¹³⁷ A 1987 study done by The National Committee on Pay Equity concluded that in New York state, a five to six percent increase in Black and Hispanic representation in a job was accompanied by a five percent salary decrease for the position.¹³⁸

The wage gap, however, is only one of many factors that contributes to the high numbers of minorities in poverty. Between 1962 and 1982, Blacks gained in education, political representation and white-collar employment, but not in overall jobs or income.¹³⁹ The burden of poverty falls on families headed by minority women.¹⁴⁰ Almost three-fourths of poor minority families are headed by women.¹⁴¹ Minority women not only bear the economic disadvantage of unequal racial practices, but of unequal gender practices as well.¹⁴² Consequently, one out of every two Black children and one out of every three Hispanic children are living in poverty.¹⁴³

The unequal number of poverty-stricken minorities is created in part by the lack of opportunities available through traditional means of improvement. Racial and ethnic minorities have been subject to more educational, health, crime, drug and alcohol-related stresses than the White middle class.¹⁴⁴ This trend has worsened in recent years.¹⁴⁵ Unequal opportunities between Whites and minorities will be exacerbated

135. ROTHENBERG, *supra* note 86, at 55. "[T]he employment, earnings, and social mobility gaps separating blacks and whites in this country have scarcely changed in a century." *Id.*

136. *Id.* at 71.

137. *Id.*

138. *Id.*

139. *Id.* at 82-83. See also Krugman, *supra* note 52, at 63.

In 1970 the median income of black families was 60 percent of white family income; by 1990, the ratio had actually fallen to 58 percent. Over the past 20 years, unemployment among blacks has risen higher in each successive recession and fallen less with each recovery. In 1970, black unemployment was 8.2 percent; by 1990, it had reached 11.3 percent. Black impoverishment hasn't fallen either. In 1990, almost 32 percent of blacks lived in poverty, up from about 30 percent in 1974. And black men who work full time earn 30 percent less than white male counterparts, a gap that has grown since the 1970s. Working women are an exception. Black women who hold full-time jobs earn just 10 percent less than white women. . . . It is virtually impossible to look at the economic state of blacks today without turning to issues of family and social cohesion—and it is next to impossible to raise those issues without touching raw nerves. And, with 45 percent of black children living in poverty and 62 percent born out of wedlock, these problems are likely to get worse.

Id.

140. GREG J. DUNCAN, YEARS OF POVERTY, YEARS OF PLENTY: THE CHANGING ECONOMIC FORTUNES OF AMERICAN WORKERS AND FAMILIES 63 (1984).

141. *Id.*

142. *Id.*

143. Austin, *supra* note 8, at 4.

144. Often overlooked in the disproportionate numbers of Hispanics and Blacks that

by the coming changes in the workplace.¹⁴⁶ Prospects for professional, technical, managerial, sales and service jobs will be more prevalent than opportunities in other fields more dependent upon education.¹⁴⁷ Despite labor shortages, the unemployment rate for Blacks is more than twice as high as the rate for Whites.¹⁴⁸ Additionally, the number of minorities participating in the labor force (i.e. employed or looking for work) has been steadily declining.¹⁴⁹

The racial and ethnic disparities found in education, labor and economics are also found in the criminal justice system.¹⁵⁰ Minorities receive higher sentences in criminal cases than do Whites charged with the same crime.¹⁵¹ The numbers of Black and Hispanic males that are either incarcerated or on probation or parole on any given day are grossly disproportionate to their percentage of the population.¹⁵² Although crime rates increased by only two percent in the period during 1979-88, the number of prison inmates doubled during that time—inmates that were disproportionately non-white.¹⁵³

As the political and social strengths of minorities grow, they will demand that equality become a reality, not a goal. The civil rights victories of the 1960s were helped along by the apathy of many unaffected Americans. With today's technology, the media enjoins everyone in the country in majority-minority confrontations.¹⁵⁴ Few will be exempt from responding to the growing diversity, and it is not yet clear whether the majority will prove itself to be more or less amenable to equalizing minorities rights than past generations.¹⁵⁵

Impact Upon the Courts. The influx of minorities into the workforce could create friction from Whites unprepared for the growing diversity. Minorities may use courts to counter White dominated management when business practices are discriminatory. Blacks and Hispanics may also address inequalities in wage levels more aggressively as cultural diversity begins to infiltrate into all areas of leadership.

participate in the criminal justice system is that ethnic and racial minorities are disproportionately victims of crime. *Id.* at 4.

145. See ROTHENBERG, *supra* note 86, at 88-98.

146. See *supra* notes 17-31 and accompanying text.

147. See JOHNSTON, *supra* note 11, at 95-103.

148. U.S. DEPT. OF LABOR, OPPORTUNITY 2000 65-69 (1988).

149. *Id.*

150. Austin, *supra* note 8, at 2.

151. See JOAN PETERSILIA, RACIAL DISPARITIES IN THE CRIMINAL JUSTICE SYSTEM viii (1983).

152. Over one out of every ten Hispanic men (10.4 percent) in the age group 20-29 is either in prison or jail, or on probation or parole, while almost one in four (23 percent) Black males in the same age group is participating in the criminal justice system on a given day. For White men, the ratio is considerably lower—one in 16 (or 6.2 percent). Austin, *supra* note 8, at 2.

153. Austin, *supra* note 8, at 2.

154. See, e.g., Gregory Cerio, *Did Gates Get the Message?*, NEWSWEEK, Dec. 30, 1991, at 44; Maria Newman, *Victim of Bias Attack, 14, Wrestles With His Anger*, N.Y. TIMES, Jan. 9, 1992, at A1.

155. See Matthew Cooper & Darian Friedman, *Governor Duke?*, U.S. NEWS & WORLD REP., Nov. 4, 1991, at 42.

The disproportionate number of minorities in poverty, however, seems likely to persist. Further, the high number of impoverished minorities will continue to distort racial issues. The probable economic hardships and workforce changes will hit minorities more severely than Whites. The cycle of poverty will continue to draw disproportionate numbers of minorities into the criminal justice system. Economic strain exacerbates cultural and ethnic disputes, and the result may be an irreconcilable polarization of separate groups. Instead of striving toward cooperation and an integration of diversity, groups may choose the protection of self-interest.¹⁵⁶

As the minority population increases, so will the number of minorities involved in law and politics. Until minorities feel they have attained equality, however, disputes will remain over methods that attempt to correct the inequality problem. With the demography of society in transition, emotions tied to racial and ethnic issues will be hard pressed as ever to remain non-violent.

The courts themselves are not well-prepared for the social diversity of the future. Dealing with group conflict will be expected, but the credibility of the justice system hinges on its ability to be accepted by the growing numbers of minorities. These groups may demand that the courts in both rulings and makeup reflect a more contemporary reality. The judiciary has always been able to couch itself as being independent of the will of citizens, and many of its principles are dependent upon that status. But society's failure to equalize rights and opportunities for all citizens will result in courts sharing in the backlash of reform, perhaps to the point where fundamental judicial principles are lost.

IV. HEALTH AND AGING ISSUES

Throughout the 1980s and into the 1990s, health concerns have become more important to Americans. People are changing their lifestyles in an attempt to become healthier. Further, medical technology has remained one of the most dynamic fields for invention and discovery, and at the current rate medical knowledge is doubling every eight years.¹⁵⁷ Medical technology will create new opportunities to extend the length of life over the next thirty years.¹⁵⁸ These advances, however, will outpace answers to the legal and moral questions accompanying the new discoveries.¹⁵⁹ One result of these advances will be a population that lives longer.¹⁶⁰ The other dynamic transformations that will accompany such advances may result in disputes which have significant impact upon courts.

156. See John Schwartz, *A Screenful of Venom*, NEWSWEEK, Nov. 4, 1991, at 48.

157. CETRON & DAVIES, *supra* note 1, at 365.

158. *Id.* at 371.

159. *Id.* at 346. See MORROW, *supra* note 83, at 56.

160. See CETRON & DAVIES, *supra* note 1, at 373.

A. Health

Developing technology will open new healthcare possibilities. However, technology will not be able to respond quickly enough to the growing dilemmas of AIDS and mental illness. While AIDS will continue to be one of the most publicly debated health care concerns, there will be growing anxiety about mental health as economic hardship forces the mentally ill onto the streets. The cost of these medical advances and health treatments will be borne by all, exerting economic stresses upon society.

Medical advances will offer startling opportunities for better health, but will be accompanied by ethical concerns. For example, human reproduction will undergo drastic changes, creating ambiguities about the definition of "parenthood."¹⁶¹ Sexual intercourse is no longer necessary for reproduction, due to technology-mediated reproduction, prenatal diagnosis, genetic intervention, sex pre-selection and commercialization of human reproduction.¹⁶² However, along with these advances come ethical questions about the possibility of having genetically designed children.¹⁶³

Other probable advances include artificial blood, human growth hormones, memory-recall drugs and newborns with particular disease immunities.¹⁶⁴ Medical advances will include artificial body parts.¹⁶⁵ Elimination of a great deal of exploratory surgery will occur through computer-based imaging tools which provide cross-sections of soft and hard tissues.¹⁶⁶ Laser surgery will decrease patient trauma and the length of hospital stays, thus lowering some medical costs.¹⁶⁷ Experimental brain cell transplants may soon be available to aid victims of retardation and head trauma.¹⁶⁸ An injured heart may be repaired by using muscles from other parts of the body.¹⁶⁹ We can expect development of better bionic limbs and hearts, drugs that prevent disease and

161. Philip Elmer-Dewitt, *Making Babies*, TIME, Sept. 30, 1991, at 56, 58. A number of bizarre court cases have cropped up as a result of ambiguities in the rules governing new technologies. In one peculiar case, a wealthy couple died in a plane accident, leaving two frozen embryos as the couple's only direct heirs. A court decided that the embryos could not inherit the estate. In a case that is still pending a divorced Tennessee couple is battling over whether the woman has the right to make use of frozen embryos created while the couple was still married. *Id.* at 63.

162. ROBERT H. BLANK, REGULATING REPRODUCTION 6-9 (1990).

163. Shannon Brownlee & Joanne Silberner, *The Age of Genes*, U.S. NEWS & WORLD REP., Nov. 4, 1991, at 64, 76.

Society's knotty decisions will become even more tangled as the massive Human Genome Project lumbers toward its goal of mapping the location of every human gene, including those that govern such traits as intelligence, coordination and grace. That knowledge will expand the potential of genetic engineering far beyond the correction of disease and push it toward the realm of social engineering.

Id. at 76.

164. CETRON & DAVIES, *supra* note 1, at 346.

165. *Id.*

166. *Id.*

167. *Id.*

168. *Id.*

169. *Id.*

body monitors that are able to warn of trouble.¹⁷⁰

It is estimated that more than 100 billion dollars will be spent before the next decade on genetic engineering.¹⁷¹ Common medical practice may include replacing defective genes with healthy substitutes.¹⁷² "By the year 2010, every family will probably have a member who has undergone such a treatment."¹⁷³ It is possible that the day will come when as much as fifty percent of a human body contains technological implants.¹⁷⁴ One result of technology is that people are being forced to explicitly define their values. Ultimately, this forced awareness may help society better clarify its resolutions and beliefs.

In recent decades infectious diseases caused only one percent of deaths in people over the age of seventy-five, although that percentage may be affected by the AIDS virus.¹⁷⁵ Chronic and degenerative diseased patients are generally what fill hospitals.¹⁷⁶ Most common diseases are multifactorial due to a combination of internal and external causes.¹⁷⁷ Future technological developments may identify 80-100 different disease-predisposing genes by testing one sample from an individual.¹⁷⁸

Health goals at the beginning of this century were oriented towards avoiding epidemic disease, escaping tuberculosis and living to age sixty-five.¹⁷⁹ We have a vastly different perspective in the 1990s, where reaching age eighty-five can be a goal for most people and infectious diseases are largely controlled.¹⁸⁰ We now must struggle against epidemic disease generated by lifestyle, such as coronary heart disease and lung cancer.¹⁸¹

AIDS will remain a national concern. By the year 2000, \$50 billion will be spent on AIDS research and treatment. By the turn of the century, every taxpayer will pay \$500 a year to care for AIDS patients.¹⁸² It is estimated that ten million people worldwide are infected with the human immunodeficiency virus (HIV) that causes AIDS.¹⁸³ Scientists agree that a cure or vaccine for AIDS is at least five years away, although drugs like AZT and genetic-engineering techniques provide some hope.¹⁸⁴ Within that time span it is estimated that over 175,000 people

170. *Id.*

171. *Id.* at 346.

172. See *Outlook '90*, THE FUTURIST, May-June 1989, at 57.

173. *Id.*

174. *Id.*

175. P. A. Baird, *Genetics and Health Care: A Paradigm Shift*, 33 PERSPECTIVES IN BIO. AND MED. 203, 205 (1990).

176. *Id.*

177. *Id.* at 206.

178. *Id.* at 208.

179. *Id.*

180. *Id.*

181. *Id.*

182. CETRON & DAVIES, *supra* note 1, at 367.

183. Jerry Adler, *Living With the Virus*, NEWSWEEK, Nov. 18, 1991, at 63.

184. SUZANNE LEVERT, AIDS IN SEARCH OF A KILLER 128 (1987).

will die from AIDS related infections.¹⁸⁵ AIDS has already polarized people's opinions because of its association with homosexuals and intravenous drug users. As the disease crosses into the lives of heterosexuals and the mainstream, the ignorance and helplessness of many people will raise tensions in society.¹⁸⁶

Mental illness will also be a concern. Discontinued funding of public mental health services was a significant cause of the rise in homelessness during the 1980s.¹⁸⁷ Colorado's former director of the Department of Institutions estimated that half of the state's homeless were mentally ill and displaced from institutions because of budget cuts.¹⁸⁸ The inability of the mentally ill to care for themselves and the reluctance of most insurance companies to cover mental health claims suggests that more homelessness resulting from mental illness may occur in the future.¹⁸⁹ Another concern is the impact that growing numbers of elderly will have on mental health services. Forecasts of an aging population will bring along an increase in mentally ill senior citizens.¹⁹⁰

The rising cost of health services is an issue that will impact all citizens. Health care cost \$685 billion in 1990, up from \$618 billion in 1989 and \$559 billion in 1988.¹⁹¹ After adjusting for inflation, health care expenditures have risen since 1950 at annual rates of 5.5% overall and 4.1% per capita. Since 1950 the personal health care proportion of GNP has nearly tripled and total health care is forecasted to reach fifteen percent of GNP by the year 2000.¹⁹² Although health care costs will hinder families by a reducing their disposable income, businesses may be most stymied by these costs, where the burden of health benefits is noticeably sapping profits and prohibiting expansion.¹⁹³ Concern about rising costs have brought about calls for massive reform of the medical industry, but it is unlikely that the cost of expensive health services can be dramatically reduced.¹⁹⁴ Suggestions for reducing costs include rationing to those who are either insured or able to pay for

185. *Id.*

186. Adler, *supra* note 183, at 64. "It is a disease that lends itself to proselytizing, both because it is so easily prevented and the needs of its sufferers are so great." *Id.*

187. RAELE JEAN ISAAC & VIRGINIA C. ARMAT, *MADNESS IN THE STREETS* 1-4 (1990).

188. Henry Solano, *Vision 2020: Colorado Courts of the Future*, "Aging, Health & Homeless Subgroup Report 2" (Apr. 11, 1991).

189. Geoffrey Cowley, *Money Madness*, *NEWSWEEK*, Nov. 4, 1991, at 50. The welfare of patients is being eclipsed by marketplace incentives and pressures. Says the former president of the American Psychiatry Association, "it is the major issue in psychiatric care today. Psychiatric standards are on a slippery slope as hospitals try to survive." *Id.*

190. Ann Schrader, *Mental Health Crisis Foreseen for Growing Elderly Class*, *DENV. POST*, Dec. 4, 1991, at 5B.

191. National health expenditures have increased steadily at an average rate of 11.5 percent annually since 1970, during which time health care, as a percent of GNP, increased from 7.4 percent to 11.1 percent. Kirchner, *supra* note 46, at 20.

192. Henry Aaron & William B. Schwartz, *Rationing Health Care: The Choice Before Us*, 247 *SCIENCE* 418 (1990). The Congressional Budget Office estimates that the percentage of the federal budget spent on health care, which stood at 10.5 percent in 1980, will rise to almost 20 percent by 1996. *Id.*

193. Frieden, *supra* note 46, at 38.

194. *Id.*

services.¹⁹⁵ However, while many see rationing as a necessary and logical step, the issue may likely invite litigation of discrimination and inequality disputes.

Impact Upon the Courts. The most important issue for the courts is that medical advances will become reality before the legal and ethical implications have been considered.¹⁹⁶ Accompanying technological advances will be legal questions concerning how to equitably distribute medical capabilities as well as when to terminate extraordinary life-support efforts. Society has become increasingly dissatisfied with letting courts decide the answers. The judiciary has functioned independently in large part because the vast majority of citizens have never had reason to question it. The courts enforced what were essentially common laws. But as people see technology making miracles possible, they will not be satisfied with courts deciding the legality of certain treatments, especially if a particular ruling violates deeply held moral beliefs.¹⁹⁷

Individuals denied treatment for any number of reasons will turn to the courts and fight discrimination suits.¹⁹⁸ Moreover, disputes will arise over insurers refusing to pay for treatments.¹⁹⁹ Insurers, trying to avoid the costs associated with new technology in health care, will expand the definition of "experimental treatment," which is usually not covered.²⁰⁰

Growing concern over AIDS will also bring about disputes over the allocation and approval of treatments. The courts will have to deal with

195. *Id.* at 63. "It comes down to a fundamental issue of health care rationing in the minds of those who feel experimental treatments should not be underwritten by private industry." Jeffrey L. Lenow & Stephan Quentzel, *Experimental Treatment: Who Pays?*, Bus. & HEALTH, Oct. 1991, at 104.

196. See Morrow, *supra* note 83, at 56; Thomas H. Murray, *Ethical Issues in Human Genome Research*, 5 THE FASEB J. 55, 58 (1991).

197. See Elmer-Dewitt, *supra* note 162, at 58.

The new techniques have also given birth to once unimaginable ethical dilemmas. Do sperm and egg donors have a claim on their biological offspring, and vice versa? Do embryos, frozen or thawed, have a constitutional right to life? How much manipulation of genetic material will society be willing to permit?

Id.

198. Brownlee & Silberner, *supra* note 164, at 66. There is concern that because of genetic advances health insurers, employers and the governments will gain access to genetic information and unfairly discriminate against people on the basis of their genes.

[Twenty] percent of companies already use genetic tests on employees, in part to hold down corporate health-care costs. In addition, 15 percent of 400 employers surveyed by an insurer intend to screen prospective employees' dependents. While such practices may make economic sense, ethicists worry that they are discriminatory, particularly since genetic traits often cannot predict with certainty if or when their bearer will fall ill.

Id.

199. See Kirchner, *supra* note 46, at 20.

200. Lenow & Quentzel, *supra* note 196, at 104.

It comes down to a fundamental issue of health care rationing in the minds of those who feel experimental treatments should not be underwritten by private industry. . . . It's likely that employers will see increased sophistication on the part of insurers with regard to experimental and investigational language, and to formulating strategies so as to strengthen their position when they choose to deny certain benefits.

Id. at 104-05.

cases concerning the rights of HIV or AIDS inflicted people who are discriminated against. There will be an increase in incidences of crime as well as the fear of AIDS results in violence, both by and against people infected.²⁰¹ The courts will hear civil and criminal claims by people who unknowingly acquire the virus from an infected person. Other disputes will arise because of abuses in mental health institutions and services.²⁰²

The rising costs of health care will multiply disputes and litigation as individuals, businesses and insurers struggle to deal with the burden of paying these costs.²⁰³ Individuals will use the courts to demand insurance coverage, while employers and insurers attempt to limit their coverage obligations. As many as seventy million Americans lacked health insurance at some point during 1991.²⁰⁴

The fear of medical malpractice will continue to raise health care costs and create additional second level issues and disputes.²⁰⁵ Doctors fearing malpractice suits for improper diagnoses may use unnecessary technology and tests to ensure safety.²⁰⁶ Insurers subjected to the added costs and individuals subjected to the unnecessary tests will use the courts to individually litigate their disputes. Health care reformists will continue to attack the costs of malpractice suits and will press for changes in the litigation of those cases.²⁰⁷ Further, many believe that the health care business supports itself with inappropriate and unnecessary use of expensive technology.²⁰⁸

B. *Aging Population*

One of the most direct results of the advances in medicine is the

201. James N. Baker, *Battling the Bias*, NEWSWEEK, Nov. 25, 1991, at 25. A man infected with AIDS was arrested in Cincinnati, and claims that he was beaten by county corrections officers. The officers say the man intentionally spewed blood from a nosebleed on four people. The man is scheduled to stand trial for attempted murder with the AIDS virus. The increasing violence against gays may be caused by mounting fear and anger over the spread of AIDS. Monitoring incidents in six major cities showed that bias crimes against homosexuals jumped by 42 percent between 1989 and 1990. *Id.*

202. Geoffrey Cowley, *supra* note 189, at 50, 51. In response to shrinking allocation of insurance dollars to mental health claims, some private psychiatric hospital have resorted to kidnapping patients and holding them against their will in order to extract higher fees. *Id.*

203. "The welfare of patients is being eclipsed by marketplace incentives and pressures. . . [h]ospitals are trying to make money. Employers are trying to save money. In that tug of war, all sorts of extremes have happened." *Id.*

204. See Frieden, *supra* note 46, at 38.

205. *Id.* at 65. According to American Medical Association estimates, medical malpractice costs add an extra \$3 billion to the nation's health care bill. *Id.*

206. The high cost of medical malpractice is one of the more visible contributors to the high cost of medical care, both in terms of expensive malpractice insurance premiums—the cost of which physicians must pass on to payers—and the amount of 'defensive medicine' performed in case of a possible lawsuit.

Id.

207. "Most health care reformers address medical malpractice issues in their proposals, largely through suggestions for reform of the tort system. The most common suggestions by far include increasing the use of alternative dispute resolution techniques." *Id.*

208. "Forty percent of the annual rise in total health care costs come from the use, misuse and overuse of high tech treatments." Kirchner, *supra* note 46, at 20.

trend of an aging population. By 2020, seventeen percent of the national population will be over sixty-five and the number of people over eighty-five will have doubled.²⁰⁹ By 2010, 38-44 million people will be sixty-five or over.²¹⁰ By 2020, the number of people in this age bracket will have increased to 49-58 million, having a significant impact on the resources of the Social Security Administration.²¹¹ The number of Americans over age seventy-five will grow by almost thirty-five percent by the year 2000, greatly increasing the numbers who are physically and mentally disabled.²¹² Growing numbers of elderly will also have an impact upon the workforce. Businesses will offer older workers and retirees flexible work schedules and retirement options to reverse the trend of early retirement and retain skilled laborers.²¹³ Companies will recognize the need to provide more "eldercare" benefits—similar to child-care benefits—to assist those who must care for older relatives.²¹⁴

The aging population will also create shifts in the economy. Traditionally, the prime working age population has been between ages twenty-five and forty-four. This group makes up the majority of workers and first-time home buyers and also provides the bulk of resources needed to supply services to the young and elderly.²¹⁵ Although the percentage of people in this age bracket will remain stable over the next fifteen years, after 2005 they will drop as a share of total population.²¹⁶ By 2010, only forty-one percent of the population will be between the ages of twenty-five and forty-four, and this number will continue to drop.²¹⁷ Families already under economic stress will be further taxed by the need to support their elderly parents, creating a "sandwich generation."

Accompanying those pressures are concerns about the economic security of seniors. There are doubts about Social Security and its resources and a developing problem with pension funds.²¹⁸ Even if pensions and Social Security are healthy, most fixed-income seniors will live on significantly less than what they earned while employed, forcing many below the poverty level.²¹⁹ Health care costs will further reduce

209. By 2000, 20 percent of the state's population will be over 55 compared with 17 percent today. By 2015 this percentage will have risen to 29 percent, caused by a dramatic surge of baby boomers entering their sixties. Kendall, *supra* note 29, at 1.

210. See ROBERT E. KENNEDY, JR., *LIFE CHOICES* 129 (1986).

211. *Id.* at 129, 131 & 133.

212. See *Outlook '90*, *supra* note 113, at 39.

213. *Id.*

214. See Miller & Tsiantar, *supra* note 104, at 49.

215. Kendall, *supra* note 29, at 2.

216. *Id.*

217. *Id.*

218. See Schwartz, *The Grasshopper and the Ant: A Retirement Fable*, *AM. DEMOGRAPHICS*, Mar. 1991, at 9, 10. Only 23 percent of baby boomers (aged 26 to 44) have a secure feeling about Social Security. See Levinson, *Retire or Bust*, *NEWSWEEK*, Nov. 25, 1991, at 50. The instability of the Pension Benefit Guaranty Corporation, the federal agency that insures the pensions of 40 million workers, is growing into an "S&L-type" dilemma. *Id.*

219. See John Tull, *Meeting the Future Need for Legal Services By the Elderly Population. Can We Do It?* (paper prepared for AARP Conference, Nov. 1989), at 2.

the availability of discretionary income for the older population.²²⁰ These trends signal a dramatic increase in the indigent elderly, especially among minority women.²²¹

Impact Upon the Courts. If seniors are faced with serious financial hardships, funding may become scarce for government services, including the judicial system. The growing class of seniors is becoming more organized as a political lobby, and elderly citizens are asserting their rights in court.²²² A collapse of financial security for such a significant portion of the population would greatly increase social unrest.

Although the elderly are less likely to commit violent crimes, family cases and other disputes brought in response to mentally ill seniors should be expected. Other conflicts regarding living wills, prenuptial agreements, the independence of the elderly and the regulation and supervision of nursing homes, mortuaries and cemeteries are all issues that will continue to be disputed in court as the percentage of seniors grows. Increases in probate and estate cases and serious traffic violations are also anticipated.²²³ Divorce and the potential loss of home, retirement money, pension plans and medical plans will continue to be meaningful issues with implications unique to the aged. In addition, the elderly will need the protection of the courts from economic fraud and physical abuse.²²⁴ Seniors may also bring about changes in the courts themselves, with calls for more accessible courthouses and simplified legal processes.

V. ENVIRONMENTAL ISSUES

Environmental issues will be of great interest to society in the next 30 years.²²⁵ Futurists predict that activist baby boomers will call for corrections of major environmental problems such as air pollution, acid rain, loss of forests, depletion of the ozone layer, global climate change, toxic chemicals in food and water, soil erosion, extinction of species and pollution of beaches, oceans, reservoirs and waterways.²²⁶ Potential responses could affect the restructuring of many aspects of society.²²⁷

220. *Id.*

221. Paul Saffo, *Institute for the Future, The Family in the Future, Families in Court: A National Symposium, National Council of Juvenile and Family Court Judges* (1989).

222. Katrine Ames, et al. *Grandma Goes to Court*, NEWSWEEK, Dec. 2, 1991, at 67.

223. The youngest (aged 16 to 24) and oldest (aged 65 and older) drivers have the highest rankings for fatalities, accidents and costs to insurance companies per mile driven. Because they are more frail, older drivers also suffer more than younger drivers when they are involved in an accident. Dan Fost, *Who's Too Old to Drive*, AM. DEMOGRAPHICS, Sept. 1991, at 8.

224. See Hilary Stout, *God Send for Many, Home-Care Industry Also Has Potential for Fraud and Abuse*, WALL ST. J., Nov. 21, 1991, at B1. The burgeoning home health-care industry that services many seniors also has been the vehicle for physical assault, theft and fraud. *Id.*

225. Ehrlich, *supra* note 5, at 154.

226. CETRON & DAVIES, *supra* note 1, at 367.

227. Sharon Begley, *Bring Back the Ozone Layer!*, NEWSWEEK, Nov. 4, 1991, at 49. The EPA predicts that UV-induced cataracts and skin cancer will cause an extra 12 million cancer cases among Americans over the next 50 years. Already skin cancer rates have doubled since 1980. *Id.*

As businesses respond to increased regulation and vocal consumer demand with environmentally helpful practices, economic growth may be stagnated.²²⁸ Over the next ten to fifteen years, business will go through the expensive process of conforming their activities to government standards. Were this the only effect of environmental issues upon the future it would still be significant. The huge cost of environmental regulations upon corporations was a contributing factor to the late '80s recession. It is well argued that corporations should make their practices environmentally sound. Doing so, however, will present significant social costs, which may cause people to lose sight of the need to immediately address environmental issues. Although popular spirit is currently high for protecting the environment, as the economy continues to suffer, many may find their ideological preference for a healthy Earth incompatible with their immediate economic needs. Inevitably, this tension between a profit-based economy and a sound environment will be balanced by the courts. Regardless, the impact of environmental issues upon the economy will accompany the economic concerns created by the trends in health and labor, and exacerbate the potential for societal tension and increasing poverty.

At the state and local level, environmental conflicts will exist between those who want to preserve natural resources and those who wish to use them for leisure, manufacturing products and creating jobs.²²⁹ As economic trends affect more individuals and communities, calls for short term economic solutions will be pitted against long term environmental issues. State economies, more dependent upon their fragile ecosystems than the nation as a whole, will be hit first if environmental mismanagement comes to bear. Between now and the year 2020, state law makers will respond to citizens demanding environmental rights with legislation intended to safeguard the depletion of the earth's resources. Federal regulatory agencies will also make additional rules, as they seek to enforce a safe and clean environment.²³⁰

The environmental doom forecasters have clearly outlined the effects of environmentally destructive practices. There also remains the possibility that the harmful practices of past generations will begin to show their effects within the next thirty years.²³¹ If this is true, the grumbling from profit-stymied industries will be faint compared to that of the rest of society suffering life under various collapses of the ecosystem.²³² Although the Government has practice in cleaning up a few

228. Thomas, *supra* note 116, at 25. Much of the economic growth of the 1980s was spent on the environment, rather than on wages. *Id.*

229. Michael Satchell, *Any Color But Green*, U.S. NEWS & WORLD REP., Oct. 21, 1991, at 74-76.

230. See Eugene Linden, *Hot Air at the Earth Summit?*, TIME, Nov. 4, 1991, at 77. Many conservationists believe the prospect of lost opportunities in the global marketplace will persuade the Bush Administration to be more forthcoming in initiating environmental legislation. *Id.*

231. Begley, *supra* note 227, at 49.

232. Brook Larmer, *Life Under the Ozone Hole*, NEWSWEEK, Dec. 9, 1991, at 43.

man-made spills, it has no experience combating irreversible, large scale environmental damage.

Current popular opinion is strong enough to inspire measures to deal with these potential disasters, and the courts will be the forum in which to enforce these measures. However, with so many other immediate, albeit short-term, issues becoming prominent over the next fifteen years, the potential exists that environment concerns will not remain a priority.²³³

Impact Upon the Courts. In addition to handling specific environmental cases, the courts will be affected by increased concern and debate over environmental regulation.²³⁴ As this topic becomes more prominent, the courts can expect an increase in disputes.²³⁵ When consumer demand increases and natural resources are depleted, courts will be asked to address a number of environmental issues concerning our air, water, topsoil and waste as well as deforestation and negligent land use.

Environmental disputes could stretch beyond state and national boundaries.²³⁶ Many may need to be addressed on a global, multilateral basis. In addition, dangers in the industrial environment will compel review of environmental law in the context of personal injury and public and corporate responsibility. People physically or economically hurt by environmental mismanagement will use the courts to redress that harm. Governments and businesses will be held liable for unsafe work or school environments. These increased demands may bring about a need for specialized, regionally-based environmental courts.

The multi-jurisdictional nature of these issues will create more federal regulatory agency involvement in environmental matters. Federal agencies will enforce safeguards for a clean and safe environment. State courts will have the responsibility to determine rights to local resources. Colorado's water courts, which resolve property disputes over water rights in the state, are a good example. At the state and local level disputes may also arise over land use. In Colorado, the recreational use of land is creating conflicts between hunters and wilderness advocates, and snowmobilers and cross-country skiers. Since there will be less land per person as the population increases, future land use disputes could include zoning, housing and transportation conflicts as well as disagreement over the long term use of pesticides for cultivation and the recreational use of land.

233. Stephen Budiansky, *The Ultimate Security Risk*, U.S. NEWS & WORLD REP., Feb. 17, 1992, at 6.

234. *Id.*

235. Frank E. Allen, *Few Big Firms Get Jail Time for Polluting*, WALL ST. J., Dec. 9, 1991, at B1. For fiscal 1991, the Environmental Protection Agency had 125 indictments, 72 convictions and \$14.1 million in fines. Convicted defendants served prison terms totaling 550 months, an increase of 121 percent from the prior fiscal year. However, the article cites concern that smaller companies are much more likely to receive jail time for polluting than big firms. Only nine percent of large-company offenders had any of their people sent to jail, while 25 percent of small companies had people ordered to serve time. *Id.*

236. Linden, *supra* note 230, at 77.

VI. CONCLUSION

Futurists suggest there are a number of ways in which the future could unfold. While social and demographic trends may seem to lead to a distinct destination, unforeseen events can always alter that course. Regardless of that possibility, important future trends must be identified. By studying changes in society, futurists can paint a portrait of what the future may consist.

The question arises, however, why plan for change? Courts have survived social change throughout history. If Thomas Jefferson stepped into a courtroom today, the settings would not seem unfamiliar.²³⁷ The physical structure of a courtroom is much the same as are the rules of evidence and the adjudicative process. It would seem that knowing and understanding the implications of future trends upon the courts would be helpful, but hardly essential information.

The importance of future social trends is tied to accepting the need to plan for the courts. If it is accepted that the judiciary's responsibility is to be affordable, accessible and responsive to the needs of the public, then it is essential that courts plan because their ability to perform these functions will face significant obstacles in the years ahead.

237. Judge John J. Daffron, Virginia Superior Court, in speech given to members of "Vision 2020: Colorado Courts of the Future," January 18, 1991.