JUSTICE HORIZONS

"NU HOU KANAWAI"

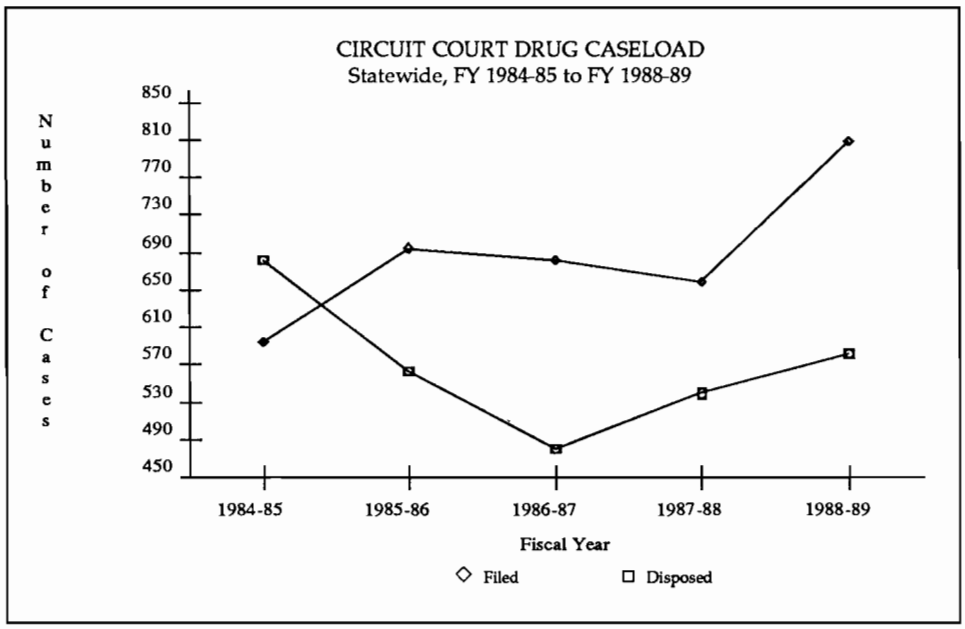
TRENDS, RESEARCH FINDINGS AND EMERGING ISSUES

The Judiciary

Research Finding:

THE IMPACT OF DRUG CASES ON HAWAII'S CIRCUIT COURT: An Overview of the Past Five Years

The drug problem has received a great deal of attention in recent years. All levels of government -- federal, state and local -- have made it a high priority. Consequently, a large amount of resources have been directed to this area. In Hawaii organizations have mobilized to meet this drug challenge--among them, the police departments, the prosecutors' offices, the court system and the correctional institutions throughout the state.



But what is the impact of these intensified activities on Hawaii's Circuit Courts? Are drug cases burdening the courts and contributing to their pending caseload? In brief, the response is yes. And, by all indications, these trends will continue unless steps are taken to alleviate the situation.

In Hawaii's Circuit Courts research has shown the following: (1) filings have increased while dispositions have decreased for overall criminal cases and drug cases statewide between FY 1984-85 to FY 1988-89; (2) First Circuit (consisting of Oahu and the settlement of Kalawao on Molokai) experienced a 97% increase in drug case filings between 1984-85 and FY 1988-89 (from 232 to 457 cases), the largest increase among the four circuits; (3) Second Circuit (composed of Maui, Molokai and Lanai, excluding Kalawao) was the only circuit that reported a decrease in case filings between FY 1984-85 and FY 1988-89, which occurred for both overall criminal cases and drug cases; (4) Third Circuit (consisting of the island of Hawaii) had the largest proportion of drug cases in the state at the end of FY 1988-89-- 39% of its criminal caseload (which translated into 480 out of its 1,235 pending cases).

The courts have become the primary recipient of the increased drug cases being processed through the criminal justice system. It was revealed that, nationwide, 97% of the drug arrests do enter the state courts system.[1] The figures reported previously included only Circuit Court cases in which drugs were the most serious original offense. Nationally, it is thought that about 20% of murders and rapes, 25% of auto thefts, 40% of robberies and assaults, and 50% of burglaries and thefts are caused by people involved in drugs.[2]

Mounting numbers of drug cases seem to be the trend for years to come. Can the courts stay current with the increasing caseload? One option is to take internal measures such as formulating a drug case processing strategy. Another option is to obtain additional resources to be applied directly to the drug situation. ❖

Jan Nakamoto

Notes:

1. John A. Goerdt and John A. Martin, *"The Impact of Drug Cases on Case Processing in Urban Trial Courts,"* State Court Journal, (Fall 1989), p. 5.

2. State of Hawaii, Dept. of the Attorney General, Hawaii's 1990 Application Drug Control and System Improvement Formula Grant, (January 1990), p. 36.

Feature Emerging Issue:

EXPANDING THE PUBLIC MIND
Illegal Drugs, Problem of the Past?

There is an emerging technology so novel, so powerful, so mind expanding that it challenges the Western notion of one's material reality and may quite possibly replace natural and synthetic drugs as the venue for reaching altered states.

Termed *"Virtual Reality,"*[1] it is a world of electronic realities created by the interaction of humans and computers in a personal, non-symbolic manner; i.e., without voice or keyboard exchange. In this interaction one quite literally enters the quantum spatial realm of computer cyberspace. The resulting reality transference is one which creates an experience as powerful as any psychedelic drug-- all without the associated physical addictions and psychotic behaviors.

With virtual reality the future of national drug policy remains uncertain. While there are proponents for both harsher restrictions and legalization, what virtual reality represents is a step beyond drugs. Therefore, because of continued developments in computer technology, it is entirely possible that the present interdiction efforts into illegal drug trade may become moot.

Drug war in the 1980s

Throughout the 1980s the federal, state, and local governments waged what amounted to a *"foreign drug war"* against the importation of drugs: heroin, marijuana and cocaine. Through this policy process, the drug problem has been externalized; i.e., eliminate the foreign production of drugs and you resolve the crisis. The counter argument is that the crisis must be internalized recognizing that *"American drug abuse is fundamentally a problem of demand not supply."*[2]

Trends in drug use now indicate that there is a shift away from smuggled illegal drugs to domestically produced designer drugs, chemical adaptations of existing psychoactive drugs (i.e., MDMA) and ice, a synthetic methamphetamine.[3] Such synthetically derived drugs are extremely easy to distribute, powerful, and cheap to make; *"a thousand dollars' worth of raw materials is enough to cook up millions of high priced doses."*[4] The ability to police these drug labs seems to be improbable due to their small size, high mobility and the fact that each new drug variation is technically legal until identified and placed upon the DEA Schedule I list.

Drug legalization is a four-letter word

Legalization proponent Princeton Professor Ethan Nadelman, joined by such notables as former Secretary of State George Schultz, Milton Friedman, William F. Buckley, U.S. District Judges Thomas Wiseman, Robert Sweet, James Churchill and others conclude that *"in ten or fifteen years criminal measures may well be totally irrelevant; they won't have a hope of controlling drug use."*[5] The key then, he concludes, is for *"the government to undercut the criminal element by taxing and regulating a portion of the drugs."*[6]

But as practical as many of the features of virtual reality are, the deeper symbolic restructuring of reality's singular archetype will create unprecedented change in human perception of the here and now.

Punitive approaches towards drug use have been ineffective and costly. *"An estimated 200,000 drug cases now make their way through state courts prompting some areas to set up full time drug courts."*[7] The focus of legalization efforts counters the criminal justice system approach with the philosophy that drug use is a social, not criminal problem.

Although it is politically expedient to be anti-drug, the European model of accepting drug use as inevitable is becoming more viable.[8] Gwen Holden of the National Criminal Justice Association says that *"incredible numbers of officials are quietly saying that we need a different way to approach drugs...but they don't want to use the word legalization in public."*[9] An alternative focus to more police, more judges and more prisons is early education, treatment and ultimately some form of government taxation and control similar to that of liquor following prohibition. <u>But will the ensuing legalization legislation really be necessary?</u>

Virtual realities the future high

The technology for *"Virtual Reality"* was first developed for NASA to simulate high performance flying conditions. The applications for this technology are many: a scientist can actually wander through molecules; architects can take owners on a walk inside proposed buildings; technicians can operate remote control robots; medical residents can train by operating on simulated bodies; and art may be taken to unprecedented levels of abstraction.[10]

Jaron Lanier, a pioneer in the field of sensory body wear, has developed special gloves, body stockings and lenses which enable an individual to figuratively, if not literally, walk into a computer program. His innovative work will forever obscure the dividing line between man and machine. But as practical as many of the features of virtual reality are, the deeper symbolic restructuring of reality's singular archetype will create unprecedented change in human perception of the here and now. The once immutable nature of reality has taken on a fluidity whereby multiple references of reality are valid at any given moment.

One of the most exceptional features of this technology is that each computerized version of reality is recorded so that all flights of fancy, no matter how sudden or indescribable, are recorded for later analysis as though reading one's mind, thoughts become a computer record for others to view and learn from.

The interactive nature of this technology places humans in a context whereby they become someone or something else. Entering virtual real-

ity one can become another person, a humpback whale, a dog, a piano, even a tree or any combination thereof. One may travel as a ghost through walls, spark with electrons in integrated circuits and, of course, fly like a bird. Most certainly those who experience the mind warping experience of cyberspace are changed in how they perceive the *"real world"* around them.

Terence McKenna notes after experiencing virtual realities that *"technology has already proven that it is the drug most palatable to the western mind. Will virtual reality be seen as a safe and harmless substitute for drugs or is it an electronic illusion from hell?"* [11]

"Will virtual reality be seen as a safe and harmless substitute for drugs or is it an electronic illusion from hell?"

"Virtual reality" is creating a new counter culture of technophiles who envision daily interaction with cyberspace which is according to William Gibson in his novel Neuromancer *"(a) consensual hallucination experienced daily by billions of legitimate (computer) operators."* [12] Lanier sums up the potential results of fear and anxiety caused by this technology, *"I'm really worried that virtual realities may become illegal."* [13]

Conclusion

Marshall McLuhan, the social philosopher who exemplified the 1960s movement, once said *"drugs that accelerate the brain won't be accepted until the population is geared to computers."* [14] The quantum leap in computer technology which virtual reality creates may indeed be the catalyst in revving the human mind up to the speed of light. One can expect a day when a scientist hot wires his brain to a Cray computer. In fact, the technologies of virtual realities may be the venue for the enabling of time travel through space. The possibilities abound.

How this technology is to be perceived by the legal system should afford many new legal issues. For example: Should access to virtual reality be restricted by law? Will the hard and software designers of virtual reality be considered pushers? Are journeys into virtual reality addictive? Will virtual reality replace all drug use? Or will access to virtual realities only be for the rich while the poor have their cheap drugs? Can murder, rape, or robbery take place in virtual reality?

This new technology presents a new facet in the debate over drug use and its restriction. If anyone with access to a personal computer can take mind bending journeys into multiple layers of reality which are more intense than those generated by any known hallucinogen, the question of controlling poppy production in Turkey becomes moot.

Perhaps legalization is, as Professor Nadelman notes earlier, the way to control drug use. Or maybe government centers will be set up whereby individuals who pass chemical drug tests are allowed to partake in virtual realties. Quite possibly the industries created by virtual reality may make questions of illegal behavior problematic. In virtual reality anything goes and reality as we know it will be forever left behind. ❖

P. C. McNally

Notes:

1. Adam Heilbrun and Barbara Stacks, *"Virtual Reality: An Interview with Jaron Lanier,"* Whole Earth Review, (Fall 1989), p. 108.
2. Mathea Falco, *"Beating The Next Drug Crisis,"* World Monitor, (February 1990), p. 54.
3. Ibid., p. 54.
4. Roger Schulman and Margaret Sabine, *"Losing the War Against Designer Drugs,"* Business Week, (June 24, 1985), p. 101.
5. Emily Yoffe, *"How To Legalize,"* Mother Jones, (February/ March 1990), p. 19.
6. Ibid., p. 18..
7. Ted Gest, *"The Growing Movement To Legalize Drugs,"* U.S. News & World Report, (January 22, 1990), p. 23.
8. See Lonny Shavelson, *"Sunday In The Park,"* Mother Jones, (February/March 1990), pp. 36-38. A Zurich pilot program provides social services, food, medical advice and needles to addicts to better learn and influence the drug scene.
9. Ted Gest, op cit, p. 22.
10. See Jeff Hecht, *"Tune in, Turn On, Plug In Your Software,"* New Scientist, (August 19, 1989), p. 32. also see *"Is it live...or Is It Autodesk?"* MONDO 2000, (Fall 1989), p. 17.
11. Terence McKenna, *"Virtual Reality and Electronic Highs,"* Magical Blend, (April 1990), p. 12.
12. Ibid., p. 102.
13. Heilbrun and Stacks, op cit, p. 109.
14. Terence McKenna, *"Marshall McLuhan - Cyberpunk Godfather,"* MONDO 2000, (Fall 1989), p. 49.

Law and Technology:

"Justice Says French Pill May End Abortion Strife"
Ken Kobayashi
Honolulu Advertiser
January 25, 1990

Summary:

The abortion issue represents one arena where many politicians would rather stay away. The politically charged issue has been surrounded by protest, controversy, and violence for months. However, Justice John Paul Stevens believes that the abortion issue may resolve itself because of the advances made in medical science.

With the advancements made in medical science, issues such as abortion, genetic engineering, drug use, and euthanasia may lose their controversial flare and eventually burn themselves out.

According to Justice Stevens, *"the French developed 'morning after' pill will allow people to make their own decisions"* in the area of abortion.

Although not approved for distribution in the United States, the *"morning after"* pill may eventually find its way to America's streets. Justice Stevens says, *"if you can smuggle cocaine into the country in the great quantities that the people in that business seem to be able to accomplish, I would think that drug (the*

Continued on Page 5

Feature Trend:

THE FUTURE OF COMMUNITY MEDIATION*

The idea of using non-judicial *"third parties"* to help settle big and small disputes has received considerable attention in the last decade. Some judges and scholars have endorsed alternative dispute resolution (ADR) as a way of reducing court delays and expanding access to justice. Business professionals, on the other hand, like ADR because it avowedly reduces litigation costs. Community leaders, however, particularly those connected with the pioneering community mediation centers formed during the 1980s, have argued that ADR should be a vehicle for mobilizing community talent, for preventing unnecessary violence, and for revitalizing the self-help capacities of ordinary citizens. Many of them, in fact, caution against its adoption and absorption into the legal system.

Currently, the adoption of mediation into various institutional settings such as courts and administrative agencies is engendering complex discussions over standardization and professionalization. These conversations, which are particularly important to community mediation centers many of which have case referral and funding relationships with court systems, invoke other issues in turn. How, for example, do we explain the comparatively rapid development of mediation principles, practices, and rhetoric in seemingly divergent sectors and contexts? What are the wellsprings of this movement and what are its symbolic currencies? And what of ADR's future, particularly the type of voluntary mediation that has been pioneered by the community mediation centers?

The Future of ADR

At the outset, the alternative dispute resolution phenomenon appears to involve a tacit acknowledgment and legitimization of the centrality of bargaining in the prevention, management, and resolution of disputes. While negotiation is certainly not new, the notion of negotiated problem solving has in the last decade become recognized, legitimized and publicly acknowledged in new ways. ADR - particularly the type of mediation espoused by the community mediation centers - has also been part of a broader ideology of informalism that has advocated for the revitalization of communities and neighborhoods, the de-professionalization and de-institutionalization of justice processes, and the enhancement of individual and local problem-solving capacities. To that extent ADR can be thought of as a movement that is now shifting into a third stage of development.

Social movements are predicated on deep-seated complaints and on the psychological characteristics of movement stakeholders: of leaders, followers and grievants. Such movements typically involve *"prophets"* and *"reformers"* who charismatically inspire *"true believers"* in a movement's preliminary phases. In later phases, presuming they survive and are not suppressed or dissipated, movements often redirect and transform. They move towards formalization and institutionalization. When this occurs, new leaders emerge to carry the movement's central ideas into the mainstream. As opposed to the innovators who initiate movements, leaders in later stages are generally accepted because of their administrative and executive abilities (Landis 1980).

Contemporary theories, however, suggest that social movements are best understood in terms of how they succeed or fail in mobilizing resources. McCarthy and Zald (1977), for example, believe that movements are often energized by people without a direct stake in the issues involved and by individuals who have no commitment to the values that underlie a movement. If McCarthy and Zald were analyzing the current ADR landscape, they would note the existence of a number of social movement organizations which are attempting to represent and invoke certain broad goals. Collectively, they might argue, these organizations -- the National Conference on Peacemaking and Conflict Resolution (NCPCR), the Society for Professionals in Dispute Resolution (SPIDR), and the National Association for Community Justice (NACJ) to name but a few -- form a loose-knit *"industry"* which is mobilizing people and money and struggling to manage both the internal and external conflicts of an emerging phenomenon.

Within the current ADR movement some believe that the formal justice system must adopt mediation and arbitration. Others, particularly the community mediation centers, argue against the annexation of ADR by courts and administrative institutions. Undoubtedly, many of the conversations about standards and professionalization can be understood in these terms. But does ADR offer a unified enough set of goals to truly be considered a *"movement"* in the first place? Examined carefully, one would suspect that people ostensibly committed to a similar philosophy of negotiated dispute resolution actually hold very different views on the nature and causes of conflict, on the functions that conflict perform in society, on the way disputes should or should not be managed, and on how dispute resolution in America should or should not be organized.

After a decade of growth, it is also now clearer that practitioners of mediation have very different transformational agendas. Some of these are rational and reformist. Others are personal, interpersonal or communitarian. In the current competition of ideas over what its rightful goals should be, we should also remind ourselves that ADR is still a new phenomenon in which the perceived need for ADR services and the supply of able and willing ADR providers seems to have outstripped actual demand. On the face of it, mediators and would be mediators far outnumber the mediated and surprisingly perhaps, people do not easily volunteer their disputes for mediation.

Scholars and practitioners are now questioning why it is that the mediation movement's concepts and symbols are so powerful and attractive yet so very difficult to operationalize. Merry and Silbey (1984), for example, suggest that mediation, with its instrumental emphasis on rational problem solving, individualism and free choice,

Continued on Page 6

French Pill *from Page 3*

French Pill) might well be rather widely available in the next 20 years, and the problem may not be one that has the practical political implications that it does today."

Comment:

The issue here is not abortion in specific but the ability of science and technology to make legal issues socially moot. With the advancements in medical science, social issues such as abortion, genetic engineering, drug use, and euthanasia may lose their controversial flare and eventually burn themselves out. For example, genetically engineered babies may transform the politics of gender in terms of the responsiblities and burden of child birth and rearing for females.

In addition, history reveals how science can also create the conditions for new laws that never before existed. Innovations such as the automobile, the computer and aircraft will attest to laws that have been created to govern their use. With these innovations came laws that allow or prohibit our movements and actions on the ground as well as in the skies.

Technology then creates new social choices and eliminates previous social choices: it creates new laws and ends old laws. ❖

Criminal Justice System:

"Police Recruiting Collides With Criminal Records"
Jacob R. Clark
Law Enforcement News
April 30, 1989

Summary:

"When convicted rapist, David Caballero, a 21 year old criminal justice student, told Michigan Judge Charles Stark that he aspired to become a police officer some day, the judge set aside the conviction under the state's youthful offender provision." Caballero was sentenced to three years probation instead of the five-year prison term he could have received. His conviction will be expunged from state criminal records after probation is served. Although the judge's decision is being appealed by local prosecutors, Caballero's dream of becoming a law enforcement officer is kept alive.

In Alabama, Federal Judge U.W. Clemon ruled that state laws barring felons and those convicted of misdemeanors from law enforcement work has an adverse impact on minorities, particularly Afro-Americans. Judge Clemon then ordered the state to *"cease abiding by the statute which barred the hiring...of persons based on arrest and conviction records."*

As a general rule, convicted felons are barred from becoming law enforcement officers. But as the two cases above suggest, challenges and exceptions to this practice are possible—even likely. And law enforcement agencies tend to have broad latitude in deciding what allowances are made for applicants with criminal records.

Some criminal justice experts feel that if arrest rates continue to climb, departments may be forced to admit recruits with misdemeanor convictions that might have disqualified them in the past.

Many states have commissions or boards that establish minimum requirements for law enforcement applicants. Most boards treat the issue broadly, addressing only the question of convicted felons and handing most of the hiring discretion to local agencies. Many of the commissions' guidelines state that a misdemeanor involving *"moral turpitude"* or depravity will effectively bar an applicant from law enforcement work. However, an exact definition of moral turpitude depends largely upon the *"philosophy of the agency."* Authorities are learning that judgments as to what constitutes good moral character vary from state to state as well as within an individual state. A survey conducted by the Florida Department of Law Enforcement indicated that *"everybody is doing a drug test. Everybody is taking a long, hard look at petty theft and will in some instances admit an applicant to be hired if that person was arrested for petty theft."* However, Leon Lowry, member of the commission's Bureau of Standards states, *"agencies in the northern part of the state tend to be more conservative when eyeing applicants than their counterparts in the southern part of the state, particularly in regard to prior drug use."*

Nonetheless, Darrell Stephens, executive director of the Police Executive Research Forum (PERF) asserts, *"it's more difficult to bring people into policing now, for a variety of reasons."* Stephens comments that a recent PERF study indicated that while agencies denied applicants for reasons of substance abuse, *"many cited thefts and other past crimes as a reason for disqualifying applicants—and thus shrinking an already thin recruiting pool."*

James Jackson, director of the Alabama Peace Officers Standards and Training (POST) Commission, insists that while the commission does scrutinize applicants closely, *"the state has never discriminated against an applicant because of race nor has it rejected an applicant based solely on an arrest record."* However, Jackson does assert that if agencies were forced to hire someone with a past history of violence and that person perpetrated an act of violence, liability would certainly fall upon that agency. Jackson states, *"then what we would say is the blood is on the court's hands."*

The issue of criminal records among those seeking to become police officers may loom even larger in coming years. Some criminal justice experts feel that if arrest rates continue to climb, departments may be forced to admit recruits with misdemeanor convictions that might have disqualified them in the past. Stephens believes a national *"blanket policy"* on prior arrest and convictions *"is probably not appropriate."* Stephens adds that with the difficulty some departments are having in attracting quality recruits, the issue of criminal records is an area that begs for more research. ❖

ADR *from Page 4*

probably does not take enough account of the emotional and normative characteristics that attend the disputing process. They suggest that voluntary community mediation may never truly come into widespread use. There may be other answers as well.

Mediation might, for example, be viewed as a simple and modest innovation that has captured temporary attention because of its novelty but that in and of itself carries no other intrinsic or extrinsic value. It may well be a set of techniques that can and will be adapted by different groups for different ends and that has -- like personal computers, running shoes, and the Beverly Hills diet – achieved a certain degree of trendiness. Cultural currency of ideas, however, and particularly of economic, legal and political ideas, does not automatically confer deeper and more important social significance.

Conversely, expanding interest in mediation may also be related to more profound and sweeping changes in American culture. The metaphor of *"negotiated"* (rather than *"imposed"*) dispute resolution, by extension, implies such themes as better communication, improved information exchange, self help, collaborative problem solving, cooperative decision making, joint risk analysis and the shift from what John Naisbitt (1982) calls an *"either/or"* mentality to one built on the notion of *"multiple options."* All of these concepts may be part of larger cultural forces that are reshaping the way American society functions. While the use of mediation may not result from or even contribute to these trends, it at least mirrors some of them.

In a critique of Richard Abel and Jerold Auerbach's books, Gabe Shawn Varges (1985) writes: *"The informal justice or ADR movement is in the process of entering a third important stage of development. Whereas the first stage involved 'consciousness raising' about the need to try new methods of settling disputes, and the second stage saw the implementation of some of these new methods, the third stage is about assessing what the movement has accomplished, and in what direction it ought to go. In particular, it is about deciding the proper mix of law and informality that its mechanisms should have, and determining whose and which type of disputes are best resolved by judicial, quasi-judicial, or non-judicial methods."*

While predictions are always risky, we should take note of some of the potential directions ADR might take in the 1990s. Certainly the current interest in ADR by courts suggests that ADR will be adopted as a short-term strategy for dealing with the old frustrations of delays and costs. Peter Edelman (1985) believes that the field of ADR is ripe for additional institutional development and argues for the development of ADR models that include state funding, state offices, multi-door courthouses, and increased visibility for ADR methods and applications. This kind of growing interest and attention will undoubtedly lead to any number of specific scenarios in which mediation comes to be more and more a part of the traditional American occupational structure.

...the future of ADR would seem to be tied most closely to the fate of activities in the justice world and to the future of legal, judicial and judicial administrative occupations.

As that occurs, mediation will experience transformations that repeat what has happened in other professions. Social work, for example, was born in the slums of London and New York as unusual and high-minded volunteer work done by philanthropists and charitable reformers. As Roy Lubove (1972) demonstrates, the current field of social work, which is highly specialized and bureaucratized, derived from these early efforts but then rapidly moved through distinct stages of professional evolution involving (1) the development of diagnostic models; (2) the creation and acceptance of new theoretical structures; (3) the building of skill-based federations; and (4) the eventual incorporation of social work into private and public agency agendas.

In the context of greater institutional adoption, the future of programs with ambitious communitarian agendas would seem problematic. Community-based mediation centers will find it harder and harder to wall themselves off from the mediation and conciliation programs being launched by courts and other dispute managing agencies. As the institutions of government adopt ADR, community mediation programs will need to establish better working relations with those institutions and find creative ways to insure the incorporation, not just of the forms of ADR, but of the philosophic tenets that led to the start of community ADR programs in the first place.

In the long term then, the future of ADR would seem to be tied most closely to the fate of activities in the justice world and to the future of the legal, judicial and judicial administration occupations. These professions may also change dramatically in the next decade. *"The courts,"* writes Issac Asimov (1985), *"are in the uncivilized stage now."* By this he means that the traditional legal and judicial ways of solving problems tend to be built on surprise, ambush, and delay, and not on communication, negotiation, and creative thinking. ADR may thus have its most profound impact, not on the small number of disputants actually being served or on communities in which such programs are embedded or on court caseloads, but on a generation of lawyers and judges newly schooled to the methods, art forms, and philosophic propositions involved in negotiated dispute resolution.

But what if the profession of lawyering truly began to reform itself in the directions currently suggested by ADR advocates? Would ADR continue to be symbolically important if the American justice system were able to clear its delays and backlogs? What would the effect on the ADR movement be if sophisticated artificial intelligence systems were developed that could accurately diagnose disputes and unfailingly match up appropriate cases to court-based mediators thoughtfully trained in the philosophies of empowerment and voluntarism? And if ADR

systems were then fully incorporated into true *"multi-door"* courthouses systems, could programs like the Community Boards survive apart? Probably not.

Conversely, however, we should also ask if mediation and, indeed, the whole metaphor of *"negotiated justice"* would continue to be credible if a new wave of rights-acquisition movements emerges. In fact, such a scenario seems quite plausible (McNally 1989). The 1990s are here. Scholars in diverse fields of endeavor -- from Ravi Batra in economics (1985) to Arthur Schlesinger

Continued on Page 8

The future development of Alternative Dispute Resolution (ADR) is likely to greatly alter society's relationship with the judiciary. As mediation programs expand both within and without the auspices of the judiciary, individuals will come to interpret new meanings governing their relationship with legal authority. What will this transition mean in the future? Some possible scenarios for ADR in the twenty-first century follow:

SCENARIO I. Banned

In order to lighten caseload and reduce court litigation, judiciaries throughout the country develop and sponsor ADR programs. As these ADR programs become established they are spun off as entities completely separate from the judiciary. In time, the programs become increasingly popular for settling disputes in a win/win fashion and individuals begin to bypass the traditional adjudicative system in favor of mediation. This trend snowballs to the point where traditional mechanisms of justice are circumvented. Eventually, the use of ADR– as its techniques are less stressful and more successful in generating social harmony–is preferred over the courts by the public for resolution of issues ranging from bio-technology, sexuality, criminal violence, and social custom. Once popular support for ADR begins to usurp the judiciary's influence upon law and its ability to regulate the actions of society, government seeks to ban all use of public mediation. This action results in conflicts between those adhering to the precepts of 17th century notions of law and order and those desiring a new method of social justice.

SCENARIO II. Lawyerized

Due to the increasingly popular role of mediation the need for traditional lawyers greatly declines. In order to establish a future income for new lawyers as well as lawyers presently lacking clients, law schools begin to develop degrees in mediation. As a result of this training, lawyers begin to develop mediation firms. Offering mediation insurance, these firms are able to lock clients into exclusive mediation services locking out public ADR centers. Eventually, the competitive and combative training inherent in a legal education results in mediation lawyers who pursue mediation victory. Thus, the original intent of ADR is co-opted and corrupted generating a return to traditional legal litigation.

SCENARIO III. Eco-Activism

Increasing public concern over environmental collapse, i.e., contaminated ground water, unsafe electronic equipment, acid-rain, air pollution, etc., spurs popular affiliation with highly active environmental groups overloading the courts with litigation as well as cases involving eco-defense where individuals sabotage equipment. Rather than face prohibitive litigation costs, loss of consumers and possible destruction of equipment, corporations, businesses, industries and government turn to mediation to develop positive, mutually acceptable solutions. The result is a new era of cooperation between environmentalist and environmental developers. By generating a sense of trust and allowing public input in the goal of preserving the environment, costly and time consuming litigation is reduced.

SCENARIO IV. Space

Initial attempts to establish a major role of ADR in society fails as individual businesses and nations see no fundamental reason to change the Western model of law. With the development of international space communities in the 1990s, limited living area coupled with high job stress results in multiple disputes. From petty squabbles over ill manners resulting in floating garbage, to assault over infringement of private space, this new living community is forced to develop a system of social management. Lacking the facilities for traditional courts, jails and prisons, a system of ADR utilizing video networking, mediation and group ostracism is established. Emphasizing total community involvement, all members are trained in ADR and must serve as mediators at one time or another. The result is a new form of social regulation stressing total harmony versus adherence to a particular set of laws. The success of the program as well as the perception of a community in space begins to impact the social structures on Earth and ADR becomes popular, especially in international communities.

CONCLUSION

The future of ADR should be a positive one. The stress now placed upon the judicial system in the form of litigation indicates that the system is undergoing a crisis. Furthermore, the lack of an apparatus for international legal cooperation is exacerbated in an increasingly interconnected global society. In order to alleviate the resulting crisis, a breakthrough involving a new dimension of law and order is necessary. Methods of ADR offer the breakthrough which will be felt at the community level as well as an international level. Certainly our perception of conflict resolution will be greatly altered in the coming twenty-first century. ❖

P. C. McNally

ADR *from Page 7*

in history (1987) – have shown that significant economic, political, and social transformations seem to occur in thirty-year cycles. In many ways, the coming decade is likely to echo much of the social turmoil of the 1960s.

It does not take a great deal of predictive imagination to see the reemergence of rights-oriented thinking by populist and grass-roots movements, to see a resurgence of shrill new demands for substantive justice, and to envision the development of a new radicalism focused on a deteriorating global environment, inequities in health care, and on human rights. In this context mediation may, like the once honorable concept of community-based *"justices of the peace,"* be viewed as a quaint but archaic remnant of a bygone era. For the moment, however, the community mediation centers have raised the critical issues and brought about a much needed debate on what the goals of America's dispute resolution institutions should be. For that alone they should be honored as a grand experiment in American social, political, and legal policy. ❖

Peter S. Adler

References:

Asimov, I., *"The Next 70 Years For Law And Lawyers,"* ABA Journal, (Vol. 71, 1985), pp. 57-59.

Batra, R., Regular Cycles of Money, Inflation, Regulation and Depression, (Dallas: Venus Books, 1985).

Edelman, P., *"Institutionalizing Dispute Resolution Alternatives,"* The Justice System Journal, (Vol. 9/2, Summer, 1984), pp. 134-150.

Landis, J., Sociology: Concepts and Characteristics, (Belmont: Wadsworth Publishing Company, 1980).

Lubove, R., The Professional Altruist: The Emergence Of Social Work As A Career, (New York: Atheneum, 1972).

McCarthy, J. and Zald, M., *"Resource Mobilization and Social Movements: A Partial Theory,"* American Journal of Sociology, (Vol. 82, No. 6, 1977), pp. 1212-1239.

McNally, P.C., *"Radicalism in the 1990s,"* Justice Horizons, (Vol. I, No. 1, 1989), pp. 3-5.

Merry, S. and Silbey, S., *"What Do Plaintiffs Want? Reexamining the Concept of Dispute,"* The Justice System Journal, (Vol 9/2, Summer, 1985), pp. 151-178.

Naisbitt, J., Megatrends: Ten New Directions Transforming Our Lives, (New York: Warner Books, 1982).

Schlesinger, A., *"America's Political Cycle Turns Again,"* The Wall Street Journal, (December 10th, 1987), p. 140.

Varges, G.S., *"Alternative Dispute Resolution: An International Approach,"* Negotiation Journal I, (1985), pp. 389-399.

* Abridged from *"The Future of Alternative Dispute Resolution,"* forthcoming in Mediation, Popular Justice, and Social Transformation, edited by Sally Merry and Neal Milner.

Justice Horizons is a *review* of the latest trends, research findings and emerging issues that may impact the Hawaii Judiciary. Its purpose is to anticipate the changing judicial needs of the public. If you find any of the issues selected of particular interest and would like more information (for example, a copy of the original article or other references) or if you would like to pass on issues and comments to us, please contact James Monma of the Planning and Statistics Office at (808) 548-8589.

JUSTICE HORIZONS

"Nu Hou Kanawai"

Published By:
The Office of the Administrative Director of the Courts
Planning and Statistics Office
The Judiciary, State of Hawaii
P. O. Box 2560
Honolulu, Hawaii 96804

Chief Justice, Herman T. F. Lum
Administrative Director, Irwin Tanaka
Deputy Administrative Director, Tom Okuda
Planning and Statistics Director, Gregory Sugimoto

Contributors:
Peter S. Adler, Phil McNally
Miles Hakoda, James Monma
Sohail Inayatullah, Jan Nakamoto
Joy Labez, Kerri Nishimura
Julie Schoen