

NU HOU KANAWAI

"Justice Horizons"

1984/Vol. I, No. 1



A Newsletter of
Issues, Trends
and Research Findings



MESSAGE TO THE READER

This is the first issue of **Nu Hou Kanawai**, or **Justice Horizons**. Through this newsletter we intend to provide a mechanism for anticipating the changing judicial needs of the public. This task of anticipation is difficult but given the rapid increase of social change, and given the information overload caused by new technologies, social issues, and legal decisions, it is an imperative task.

Here, we hope that **Nu Hou Kanawai** will be a useful tool for you. Through this periodic newsletter we hope to keep you abreast of the latest issues, trends, and research findings that may directly or indirectly impact the Hawaii Judiciary.

Our methodology simply consists of researching a variety of information sources ranging from journals to computer networks. Through scanning and other related methodologies we collect a variety of issues that may impact the Judiciary in the near and far future, that is, our collection consists of issues that are "on the horizon" and "beyond the horizon." Issues in this newsletter **tend** to be those that may have a large impact on the courts, the legal system, and society in general and are relatively new to the judicial and legal community. Of course, the selection of a particular issue does not mean that the Judiciary endorses or advocates it.

We see **Nu Hou Kanawai** as a cooperative effort; thus, we hope that you will pass on appropriate issues and comments to us. In addition, if you find any of the issues in this volume of special interest and would like more information, a copy of the original article or additional references, please call our Planning and Statistics Office.



Lester E. Cingcade
Administrative Director of the Courts

CORRECTIONS:

Identifying High-rate Offenders

"The Beast in the Jungle"
Gaylen Moore
Psychology Today
November 1983

Summary:

This article raises two questions: (1) can high-rate offenders be identified? and (2) can selective incapacitation be carried out without compromising civil rights?

There are two basic methods to identify high-rate offenders:

(1) Psychological/Judgemental—A recent study was undertaken by Marvin

Wolfgang of the University of Pennsylvania. It generally involves the consultation of psychologists and psychiatrists to assess the offender's potential for rehabilitation on the basis of his behavior and personality. This method has been used for years in sentencing and parole.

(2) Actuarial—A recent paper on this subject was written by Peter Greenwood of the Rand Corporation. He focused primarily on a person's criminal and personal history, prior criminal record, juvenile record and employment history.

Comments:

The possibility of correctly identifying a high-rate offender and the idea of "selective incapacitation" has always been a puzzlement to the criminal justice system. Should a judge or the jury base their decision according to one of the two methods suggested in the article, namely

"psychological" and "actuarial"? Would the defendant's constitutional rights be violated? Are these methods sound, that is, is it possible to predict "future violence"? In one incident the Supreme Court ruled that expert testimony is not unconstitutional and should be permitted even in a life or death decision. (See papers published by the Rand Corporation on Criminal Justice, including Greenwood's paper, "Selective Incapacitation", August 1982.)

A recent critique by Andrew von Hirsch is particularly useful in this regard. He argues that Greenwood's Rand study makes some serious errors: firstly, it has a 56% rate of false positives, that is persons mistakenly predicted to be recidivists; secondly, from the self-reported crime rates of the sampled prisoners, he

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LAW:

"Biological Aggression—The Legal Dimensions"

Janet Raioff

Science News

September 10, 1983

Summary:

This article suggests that there is a biological basis to rage and violence. Scientists have discovered a high correlation between violence and trace-metal abundances in hair. The writer speculates that this and other new evidence will prod the nation's criminal justice system into re-evaluating what it does with its violent offenders.

Since one is not criminally responsible if one lacks the substantial ability to control one's behavior to conform to the law, it could be argued that the defendant's biochemically mediated behavior rendered him or her unable to control his or her rage, thus developing a biological corollary to the insanity defense.

Comments:

If the trace-metal abundances in hair are the source of violent behavior, what then is the cause for such abundance? If it is artificial, contamination of some sort may be the cause; if it is natural, genetic predisposition may be the cause. The biological basis for crime expands the horizon of theories that attempt to explain criminal behavior. This perspective also moves towards a whole new range of alternative definitions of crime that challenge current definitions and notions of responsibility and free will. □

"Insofar as some criminals are criminals as a result of chemical, biochemical or genetic deficiency, they may in the future, be isolated, singled-out, and treated on a case-by-case basis. . . [The] use of drugs, electrical implants, surveillance and supervision hold enormous promise for regulating behavior and enormous risks for squelching desirable or benign but troublesome behavior."

JOSEPH COATES

Information Systems

"ABA: Bring Technology to the Legal Profession" and "Managing the Future"

ABA Annual Report for 1982-1983

American Bar Association Journal

January 1984

Summary:

The ABA has designed a computer based information system called AMBAR that provides access to over 2,000 publications and activities of the ABA. In addition, in 1984 ABA/NET, an easy access network system, will be available through most word processors, personal computers and computer terminals. AMBAR is available through WESTLAW and will soon be available through LEXIS.

Comments:

This report evidences the ABA's policy to help integrate new technology into the practice of law in a cost effective and orderly way. The ABA recognizes that information access is the key to productivity.

The information systems developed by the ABA may have numerous future effects on the legal system:

- (1) it may make the legal system more accessible to the public—clients unable to travel to law offices may be able to communicate and transmit data over the systems;
 - (2) lawyers may be able to perform more efficiently by having more data available, e.g., ABA reports;
 - (3) lawyers in different cities can work together on cases (assuming no jurisdiction problems); and,
 - (4) continuing legal education could be easily accomplished with systems like these. □
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Corrections

Continued from Page 1

goes on to generalize for the larger community—however, Hirsch argues that his initial sample is unrepresentative as only a few percent of offenders get caught and fewer end up in jail. Thus, we should treat Greenwood's study with a great deal of justified skepticism. (See *NIJ Reports*, January 1984. See also Alfred Blumstein, "Selective Incapacitation as a Means of Crime Control." *American Behavioral Scientist*, September/October 1983.) □

Caseload Trends

"Debunking Litigation Magic"

Dennis Williams, et. al.

Newsweek

November 21, 1983

Summary and Comments:

A recent study conducted at Wisconsin's Civil Litigation Research Project argues that the present popular perception that America is an overly litigious society with frivolous cases clogging the courts is false. The study shows that although caseload has gone up there is little evidence to prove it is due to litigiousness, as only 1 to 10 people who started out with a suit ever made it to a lawyer, and of those who did only 1 in every 67 people ever pressed the grievance to a final **judicial** resolution. In fact, America's level of litigiousness is lower than Australia's (even though Australia has half as many lawyers as the U.S.) and only slightly above England's.

Marc Galanter, a Wisconsin law professor, argues that the growth of government, the opening up of the legal process to groups that previously had no occasion to call upon the law, and increased knowledge by consumers about the law are the real reasons behind increased filings.

Still, those who argue that litigiousness is the key variable remain unconvinced, arguing that it is simply a matter of subjective interpretation of data; all parties, however, tend to agree that the data is far from complete and the present research far from thorough. □

"...it is incumbent upon the Judiciary to develop suitable mechanisms for the monitoring of the present and future changing demands of society as well as for developing appropriate means to accommodate its changing needs whenever the pressures of such needs are manifested in the present."

Comprehensive Planning in Hawaii Judiciary.

"We can no longer tolerate the vacuous notion that we can get along with the present structure because we have always done it that way."

CHIEF JUSTICE BURGER (1983)

LAW AND TECHNOLOGY:

Corrections

"Electronic Handcuff"
Omni
December, 1983

Summary and Comments:

The latest in the high-tech war against crime is the homing device. It can be locked on to the wrists of convicts or in the future perhaps implanted in their brains. The police then are able to monitor the parolee through a computer console. Robert M. Weigle, probation officer for Santa Clara County, suggests that criminals being monitored could be restricted to their homes and their jobs, or other such boundaries. Restrictions could decrease gradually with good behavior. Already, Judge Jack Love of the State of New Mexico has begun experimentation with electronic wrist devices to monitor offenders. According to the pilot project proposal, this bracelet will allow offenders to serve their sentences in their own homes. □

Computer Crime

"Computer Abuse: A Crime of the Times"
Sen. Charles McC. Mathias
Security Management
January 1984

Summary and Comments:

The well-publicized successful exploits of a group of computer pranksters has brought attention to the previously quiet problem of computer abuse. These exploits have especially focused attention on questions of security and privacy rights. The accelerating tempo of developments in computer science means increasing opportunities for abuse. Government and industry share the burden of devising ways of stopping computer abuse through legislation, education programs for the public, law enforcement officials, and the judiciary, and through the far more promising "self help" measures by computer proprietors. (See "Artificial Intelligence", *Omni*, March 1984.)

There are numerous questions, considerations, and problems in attempting to control computer abuse. First, our criminal justice system is overloaded; second, it is detrimental to corporate image and financial survival to report computer abuse; and third, there appears to be a tendency to perceive computer abuse as a less violent, more sophisticated crime, thus possibly increasing the nature of a "dual" criminal justice system of "street" and "white collar" crime. Finally, abuse is difficult to detect and it is not a simple matter to distinguish between innocent and criminal processing activities.

The January 1984 edition of the **Security Management** features six articles dealing with computer abuse. □

Embryo Engineering

"One Animal from Two Embryos"
Science Digest
March 1984

Summary and Comments:

The power of genetic revolution comes to life again with the production of a chimera—an experiment in embryo manipulation. Scientists at Cambridge, England successfully incorporated cells of one species to the embryo of another species. This product, the so-called "chimera," is a composite in which some cells are from one animal and some cells are from another.

The experiment suggests that the embryo is a very sturdy organism; this means that the possibility of splitting an embryo into several viable parts could provide more embryos for transplanting. In the future, "frozen embryo banks" might be used to store embryos for later use. "This would provide a convenient alternative for women who become pregnant but would prefer to delay childbearing." This may bear the same controversy as the issue of "abortion".

This experiment also suggests the possibility of creating a new life form, a "human chimera". In addition, the already existing cellular technology suggests the possibility of an interface between humans and technology. With the ability to create new life forms, laws addressing life and human rights may need to be re-evaluated. □

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CRIMINAL JUSTICE SYSTEM:

Public Perceptions

"Why Justice is Blind"
Hearst Corp.
Forbes
December 11, 1983

Summary:

A survey by Hearst Corporation found that 50% of the respondents thought that **a defendant was guilty until proven innocent**. One half of the respondents have once served as jurors and 33% were college graduates.

In addition, only 41% recognized Chief Justice Burger, and 59% could not identify Justice Sandra Day O'Connor. The respondents admitted that they were least familiar with the Judiciary branch of government; in fact, 19% said that they relied on T.V. dramas for information on the courts.

Also of interest was that three out of every four respondents said that they knew a lawyer to whom they could turn to with a legal problem and over half of the respondents considered it good public policy that a person accused of a crime should be prosecuted to the fullest extent of the law, while one of three accept some degree of plea bargaining. (See *State Court Journal*, Fall 1983, for a full description of the survey.)

This survey of 983 individuals confirms the earlier 1978 Yankelovich, Skelly, and White, Inc. study which concluded that the public's knowledge of the courts is extremely low. (See *State Courts: A Blueprint for the Future*, National Center for State Courts, 1978.) □

"Crises need not imply a headlong rush for the escalation of management. Instead it can mean the instant of choice, the marvelous moment when people suddenly become aware of their self-imposed cages and of the possibility of a different life."

IVAN ILLICH,
Toward a History of Needs (1978)

LAW AND TECHNOLOGY:

Continued from Page 3

Human Genetic Engineering

*"Human Genetic Experiment Likely
Soon"*

*New Scientist
January 19, 1984*

Summary and Comments:

This article entitled "Human genetic experiment likely soon" in *New Scientist* and yet another front-page article indicating that the Pope has for the first time spoken out against, or at least expressed grave concern for, genetic engineering in general and especially of humans, indi-

cates that science and religion are about to run head on once again, and in a most serious manner.

Already one American author, Jeremy Rifkin, has written a book in opposition to genetic engineering and has gotten a large number of American religious figures to sign a statement against genetic engineering. The addition of the Pope, and hence the Catholic Church, into the fray suggests that serious moral and legal problems and challenges lie immediately ahead.

The challenge of "The Biological Revolution" was the first "emerging issue" identified by the futures group for the Hawaii State Judiciary. The evidence of these articles indicates that the "emerging issue" is a very well-developed trend, and is likely to be a "present problem" very soon.

Are we intellectually and emotionally prepared to address this issue? □

"We must think of the law not only as a fruit of a long process of human learning, institution building and accomodation, but also as the seed of a whole new set of institutions which will lubricate the great geological and political faults which underlie the system."

KENNETH BOULDING.

"Economics, Evolution and Law." (1976)

"The law is a tool, not an end in itself. Like any tool, particular judicial mechanisms, procedures, or rules can become obsolete."

CHIEF JUSTICE BURGER (1982)

"[Justice Benjamin] Cardozo believed . . . that the law must draw its vitality from life rather than the precedents and that 'the judge must be historian and prophet all in one.'"

BERNARD SCHWARTZ,

The Law in America (1974)

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 futures researcher Anna Yue at (808) 548-8589.



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**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, Lester E. Cingcade
Deputy Director, Tom Okuda

Contributors and Advisors:

James Dator Greg Sugimoto
Carol Dodd Sally Taylor
Sohail Inayatullah Lorene Walker
Joy Labez Wayne Yasutomi
Anna Yue