

NU HOU KANAWAI

"Justice Horizons"

A NEWSLETTER OF ISSUES, TRENDS AND RESEARCH FINDINGS



LAW:

Forecasts of Social Issues

"Project Outlook"
New Management
Volume 1, Number 4

Summary:

The University of Southern California's Center for Futures Research regularly polls corporate planners, consultants, and futurists on a variety of issues. The following are selected forecasts (probability of occurrence and year of occurrence) presented by the above mentioned experts.

For the first issue, "No Victim, No Crime: elimination of all so-called victimless crimes (drug abuse, prostitution, suicide, etc.)," half the experts thought there was only a 25% probability of this event occurring by the year 2001.

For the second issue, "Personal Liability: boards of directors of corporations are held personally liable for product safety and pollution," half the experts thought that there was a 30% chance of such an event occurring by 2001. If the event were to occur, however, 35% of the respondents believed the event would occur between 1987 and 1991.

For the third issue, "Losers Pay Attorney Fees: U.S. courts allow winning parties to collect attorney fees from losing plaintiffs in both civil and criminal cases," half the experts believed that there was a 30% probability of this event occurring and one-fourth of the experts believed that there was a 55% of this event occurring. If this event were indeed to occur, then most (37%) believed it would occur by 1996.

For the fourth issue, "Social use of drugs: pleasure enhancing drugs achieve a level of social responsibility comparable to that of alcoholic beverages," half of the

experts believed that there was a 45% chance of this event occurring.

For the fifth issue, "Right to job: large employers are required to provide a job for involuntary unemployed people in proportion to their number of employees and the number of job applicants," half of the experts believed that there was a 25% probability of this event occurring by 2001.

The two issues which the experts believed were the most likely to occur dealt with incentives: investment incentives for corporations through liberal taxation policies and work incentives for the unemployed.

Some other issues in this data bank include: Quebec separation; U.S. government national planning; free public transit; mandatory public service (for all U.S. residents between the ages of 18-25); one term limit in Congress; nuclear black-mail; and, enforcement of anti-trust regulations.

The Family And Parental Rights

"Which Parent Owns the Child?"
Barbara Amiel
Maclean's
April 16, 1984

Summary:

The issue of rights between a father and mother has been presented in a Canadian court, bringing with it new controversies relating to the family, abortion, the rights of the child, and child support. Two parents of an active marriage conceived their second child. The mother decided to have an abortion—the father, dis-

agreeing with her decision, went to court. The judge found no area in the law that gave the father any legal right to speak for the child, while the mother could do what she chose. However, he "acknowledged a father should have some rights—at least the right to bring an application on his own behalf."

The author views today's "progressiveness" as denying the father his natural emotional link with the unborn child. As far as abortion law goes, she sees fathers regarded as "breeding bulls" having no legal connection with their offspring except when it comes to support. She raises the issue that, at the very least, if one takes constitutional guarantees of

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New Litigation

"Transporting Water: A New Form of Piracy"
Randolph Picht
Philadelphia Inquirer
December 2, 1983

Summary:

Recently Exxon corporation caused an uproar by collecting millions of gallons of freshwater from the Hudson River and transporting it for sale to Caribbean governments. Although Exxon was not accused of violating any federal laws or regulations, they have opted to find water from places outside the U.S.

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COURT ADMINISTRATION:

Alternative Dispute Resolution Forums

*"Mediation and Lawyers:
The Pacific Way: A View From Hawaii"*
Bruce E. Barnes and Peter S. Adler
Hawaii Bar Journal
Vol. 18, 1983

Summary:

Since 1979 almost 6,000 people have been assisted by Hawaii mediators in settling disputes out of court. In addition, there is at present an effort to create a statewide mediation network. The benefits of mediation compared to litigation are numerous. First, disputes are settled more quickly in mediation; second, mediation leads to substantial financial savings for all parties; third, mediation is more accessible to the public than the Courts; and, fourth, mediation solves problems through compromise, while in litigation one party's victory is another party's defeat.

Comments:

As the Hawaii mediation network grows, it will have a number of possible impacts on the adversarial aspects of the Judiciary:

(a) There may be less reliance on the courts to settle disputes, thus resulting in a decrease in the court caseload.

(b) The Judiciary may adopt mediation as an alternative to the adversarial dispute resolution because of its benefits (financial savings, less frustration etc.). The Family Court could expand its "court-connected mediation services for divorce couples" to all family dispute cases, such as child custody.

(c) There would be a demand on lawyers/attorneys to specialize in mediation techniques. This would have an impact on legal education and possibly the Bar exams.

See also: Gus Cifelli and David Szymanski, "Mediating Small Claims Promotes Amicable Settlements," **State Court Journal** (Vol. 7 No. 4). In addition, the University of Hawaii, Department of Political Science has developed a program that provides training in mediation.

Planning

**Comprehensive Planning in
the Hawaii Judiciary**
*Office of Planning and Statistics,
The Hawaii Judiciary*
August 1981

Summary:

Traditionally the Judiciary has been perceived solely as a dispute resolution forum. This manual, however, offers a multidimensional perspective of the Courts. The author breaks down the Courts into the following dimensions: (1) The Judiciary as a **Government Branch** with the mission of upholding the Constitution; (2) The Judiciary as a **Dispute Resolution Forum** with the mission of providing for the fair and expeditious resolution of cases; (3) The Judiciary as a **Public Agency** with the mission of providing services to the public in a cost-effective manner; (4) The Judiciary as a **Subsystem of the Legal/Criminal Justice System** with the mission of coordinating the different aspects of the legal system so as to provide for the effective administration of justice; and, (5) The Judiciary as a **Societal Institution** with the mission of anticipating and responding to the future judicial needs of the public.

In addition, a recent re-analysis of the dimensions added the following: (6) The Judiciary as a **Political Institution** involved in the authoritative allocation of values (policymaking), and (7) The Judiciary as a **Patho-Bureaucracy** involved, like other bureaucracies, in the maintenance and enhancement of systemic power.

This manual is also important for the field of court administration in that it develops a comprehensive integrated model of planning: one that is problem oriented, purpose oriented, and alternative futures oriented. Various levels of planning from long-term top level strategic planning to short-range operational planning are also part of this model. Finally, **Comprehensive Planning in the Hawaii Judiciary** attempts to integrate planning into the budgetary process.

"There are not only different futures possibilities: There are also different futures desirabilities."

FRED L. POLAK (1982)

Alternative Dispute Resolution Forums

*"BBB Offering Faster Settlements,
Aide Says"*
Ann Harpham
The Honolulu Advertiser
November 22, 1983

Summary:

The Better Business Bureau Mediation Arbitration Division (MAD) provides a free, alternative settlement service to consumers throughout the nation. The office in Washington reported that 90% of all cases handled by the Bureau are settled through mediation with the remaining 10% going to binding arbitration. **It also boasted that it provided a faster settlement service than the judicial system, with an average settlement time of 38 days.** MAD commented that its increasing workload suggests that consumers are turning more toward mediation and arbitration to settle disputes, and that the bureau expected a continued increase in its workload in the future.

"In a sense, visions capture the changes that are already latent in the present and posit these as the futures reality. Visions are linked to people who carry the seeds of change, and are not mere abstraction."

ELEONORA MASINI (1982)

PARENTAL RIGHTS:

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equality between men and women seriously, society will have to face the question of allowing men to opt out of their support obligations for a child they do not want.

Comment:

As the structure of society and of the "family" continue to change, the courts are seeing an increasing number of complex disputes with new, alternate interpretations of rights. The family is not a static, unchanging institution. It is dynamic, changing in form with the changing and varied expectations and needs of the individuals who comprise it. The trend is to a family "style" suited to meet individual family needs. Will the courts respond by enhancing these changing societal norms?

MANAGEMENT:

Creativity

"Boosting Personal Creativity"
Marilyn Machlowitz
Boardroom Reports
March 15, 1984

Summary and Comments:

Being more creative as future conditions grow more unpredictable and as old solutions to new problems do not work is increasingly important for government and business. Many managers think that creativity is in-born and reserved for artists; however, it is a characteristic that can be developed and enhanced:

- 1) **Forget about failure.** "Highly successful people seem unaware about failure. . . . This very strong self-confidence may be a key element to success."
- 2) **Temporarily ignore the usual constraints on what can be done.** It is best to first think about the best possible outcome and **then** think about restrictions and requirements. Many good ideas are killed by "it can't be done because of this or that".
- 3) **Do it.** Successful individuals just go ahead and "do it".
- 4) **Read something different or read the same things differently.** Pick up unfamiliar magazines and look for information that is pertinent to the problem at hand. "What's read is often less important than how it is read."
- 5) **Reduce the distinction between hobbies and work.** "People often have good ideas or demonstrate great innova-

NEW LITIGATION: *Cont. from Pg. 1*

Comments:

A growing global population (4.7 billion 1984 U.N. estimate) and increased industrial development may soon lead to water shortages in the First World as severe as the energy crisis of the 1970's.

This increased demand for water (as well as air and space) will lead to new types of litigation. The Exxon problem is an indicator of future problems to come. Hawaii will be especially vulnerable.

Can laws, plans, and other activities be engaged in now so as to avoid massive litigation in the future?

tion and persistence in connection with their leisure activities." This is partly because the mind is relaxed **and** concentrated. For example, post-it note pads were devised by a 3M Company employee "looking for a way to mark up music for his choir without permanently disfiguring the hymnals".

Innovation and creativity thus are characteristics that each one of us can develop. Who knows how many new solutions could be developed to present problems!

THE BAR:

Increases in Lawyers

"Lawyers and the Judiciary"
Office of Planning and Statistics,
The Hawaii Judiciary
Trend Report, March 1984

Summary and Comments:

This report presents numerous statistics as to the growth of lawyers in Hawaii and in the U.S. While the ratio of lawyers licensed to practice in Hawaii in 1968 was 1:1012 (that is, 725 lawyers to a population size of 734,000), the ratio by 1983 was 1:360 (or 2,787 lawyers to a population of 1,002,700). This is a 284 percent change in 15 years.

The percent of local residents (defined as someone who graduated from a high school in Hawaii) has increased from 40% in 1972 to 57% in 1982; the majority of these coming from the William S. Richardson Law School.

This study, interestingly enough, found a strong correlation between a change in the number of lawyers and a change in the court caseload. That is, an increase in lawyers corresponds to an increase in caseload. Causation, however, was not determined.

This report also forecasts an increase in para-legals and lawyers trained as mediators and arbitrators. In addition, the following new types of organizations are developing: (1) super 2,000 lawyer firms, (2) law stores and clinics, and (3) do-it-yourself lawyering. Moreover, in terms of future developments, this report forecasts the use of computers in aiding fact-finding, precedent researching, and judicial decision-making.

LAW AND TECHNOLOGY:

Electronics

"Ethnotronics"
Arthur Harkins
Cultural Futures Research
Spring 1983

Summary:

In his regular column in **Cultural Futures Research**, University of Minnesota futurist, Art Harkins, discusses the probable rapid evolution of robots as a consequence of Atari's marketing of robots for the home. He thinks the spread and popularity of robots will be similar to that of personal computers and believes we need to prepare for this by anticipating the more important robot/human interactional problems that will soon arise.

He concludes with the following possible scenario of robot development over the next 15 to 20 years:

"Androbot BOB will be a hit and will spawn successors in tens, if not hundreds, of companies in the US, Japan, Germany, France, and Italy. Mass production of such robots will be done cheaply in these countries, and in Taiwan, South Korea, and perhaps China. People all over the world will find uses for such robots, many more than we can imagine. Late 1980s versions of Androbot BOB will be able to carry on relatively simple conversations in English and other languages. Around 1990 to 1995, new robots with machine intelligence will begin to appear in research and development programs in Japan and America. Regarding these machines as appliances will be difficult, because consistent with (1) the type of programming they are provided, and (2) the degree of their own self-learning, they will qualify as "humans". Societies of such intelligent robots could engage in mutual teaching and learning at a rate roughly tens of thousands of times faster than humans, for whom a

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Biogenetics

"Bioengineering: The Promises and the Problems"

Robert Veatch

Trend Analysis Program, American Council of Life Insurance January 1984

Summary:

Robert Veatch, an ethicist with the Kennedy Center for the Study of Human Reproduction and Bioethics at Georgetown University, Washington, D.C., has written one of the best discussions of the ethical, legal, and entrepreneurial consequences of the emerging "biological revolution" yet seen. The Foreword states, "These new technologies and processes are changing some of the most basic notions of life. Age old assumptions such as when death occurs or when life begins are now less valid in many cases. . . . The (new) rules are disturbing for many reasons. They are often an affront to our notion of right and wrong as perceived by religious belief and understanding of who

we are. . . . Some of these issues pit members of one sex against the other and raise questions of personal freedom conflicting with societal standards and norms."

He also makes clear that much "bio- and genetic engineering are not futuristic, speculative technologies. They are procedures available here today, and already used in agriculture, manufacturing and medicine." It is just that research and development is proceeding very rapidly here and moving into areas before we are prepared to deal with their human and social consequences adequately.

The report discusses four clusters of problems:

- (1) The manufacturing of man: The ethics of tampering;
- (2) Competing with superman: The ethics of fairness;
- (3) Allocating health and happiness: The ethics of resource allocation; and
- (4) Democratizing science: The difficulty of providing meaningful popular participation in addressing these complex, technical, and wholly novel problems.

Comments:

This is an even-handed treatment of issues already before (or soon to be before) the courts, and is a good example of how the life insurance industry, which must be forward-looking by its very nature, provides futures information to its members.

ELECTRONICS: Continued from Pg. 1

generation is often required to allow new knowledge to take hold."

Comments:

Clearly a development along the lines Harkins suggests would have great impact on all aspects of human life. As far as the Judiciary is concerned, what are the rights of robots as they approach, and cross, the threshold of intelligence? Can humans alone determine the rights of other intelligent entities?

The purpose of this newsletter is to keep you abreast of the latest issues, trends and research findings that may impact the Hawaii Judiciary. For further information please contact Anna Yue at (808) 548-8589.



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