

NU HOU KANAWAI

"Justice Horizons"

A NEWSLETTER OF ISSUES, TRENDS AND RESEARCH FINDINGS



LAW AND TECHNOLOGY:

Computer Hackers

"Keep Designing"
Steward Brand
Whole Earth Review
May 1985

Summary:

This article records the informal and formal proceedings of the November 1984 Hackers Conference. Inspired by Steven Levy's book, **Hackers: Heroes of the Computer Revolution**, the conference addresses many of the philosophical questions raised by the tenets of the Hacker Ethic which states: 1) Access to computers should be unlimited and total; (2) All information should be free; (3) Mistrust authority—promote decentralization; (4) Hackers should be judged by ability and nothing else; (5) You can create art and beauty on a computer; and (6) Computing can change your life for the better.

The participants of the conference, some of the most influential and innovative software designers, provide the following insights.

Steve Wozniak, co-founder of Apple Computer:

"Hackers frequently want to look at
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Information as Property

"Public Information"
Larry Hunter
Whole Earth Review
January 1985

Summary:

Information, especially personal information, has become a valuable resource in the high-tech information age of computers. Computers are revolutionizing the process of collection and distribution of personal records. The author points out that, "in this information age, our public acts disclose our private dispositions, even more than a camera in the bedroom would."

Personal information can be derived from credit card receipts, phone bills, credit records, grocery receipts, bank statements and library withdrawals. This data, Hunter contends, "when put together can create a remarkable picture of who you are, what you do and even what you think."

The issue of information rights is further complicated by the search and seizure of data inside a computer terminal. At present computer files in the work place

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Computer-launched Missiles

"Can Computers Legally Launch Warheads?"
Ian Anderson
New Scientist
October 25, 1984

Summary:

A computer specialist from Stanford is trying to prove in court that the development of a sophisticated computer system to control the launch of retaliatory nuclear missiles violates the American Constitution. Clifford Johnson wants the court to declare that the constitution does not allow the president to surrender political power to a machine.

Johnson's efforts come as an increasing number of computer scientists and others question the role that computer technology and artificial intelligence play in military developments.

His suit is directed at a strategic concept called "launch-on-warning" (LOW). Under this concept a computer system would control the speedy release of nuclear missiles in response to the warning of an attack.

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H.G. Wells said that the future is a race between catastrophe and education. If you have no catastrophe, you're not motivated to change. And if you have too much catastrophe, you're paralyzed and incapable of change. We have to remember that the presence of catastrophe is information-generating and aids cultural evolution.

William Irwin Thompson (1985)

LAW AND TECHNOLOGY:

Computer Detects Crime Patterns

"The Detective from the Laboratory"
Christopher Joyce
New Scientist
November 15, 1984

Summary:

One of several disturbing new trends in crime that has created a good deal of experimentation by forensic scientists is the increase of murder, especially by "serial" or "series" killers. When compared with traditional reasons for killing, these crimes appear "motiveless" (although most often they are associated with rape), and they are difficult to solve.

Computer programs designed to track serial criminals are now in experimental stages. These programs monitor the pattern of a serial criminal against the background noise of other unrelated crimes.

The Federal Bureau of Investigation

COMPUTER HACKERS

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code, like operating systems, to learn how it was done before them. Not to copy, not to sell, but to explore and learn from and extend."

Robert Woodhead, author of **Wizardry**:

"I don't want anyone hacking into that product (Wizardry) and changing it because then it won't be mine. My soul is in that product."

Stuart Brand:

"On the one hand, information wants to be expensive because it is so valuable. The right information in the right place just changes your life. On the other hand, information wants to be free because the cost of getting it out is getting lower and lower all the time."

Andrew Fluegelman:

"The problem is just distribution. There's been no thing on Earth as easy

(FBI) is designing a system to go beyond computer-aided collation of information from jurisdictions across the country. It will incorporate the expertise of the Behavioral Sciences Unit at the FBI Academy in Quantico, Virginia. The unit is creating a "Violent Crime Apprehension Program" (VICAP), whose computer will contain in digital form the results of interviews with scores of violent criminals. The computer will compare the modus operandi of crime scene information with those of other unsolved crimes in its files, and presumably detect a pattern. With the behavioral system, the computer may also provide a relatively detailed description of the killer.

There is tremendous scope and interest in the application of new forensic techniques. Britain's Home Office has even paid for a computerized "expert system," called SAGE, to help train forensic scientists in the state of each of the forensic arts.

Much of the drive for more hardware arises from a fear of being seen by a jury

to distribute to people as software. The reason that we go out and pay five or ten or twenty thousand dollars for a car is because you need a key to drive it and it's usually sitting behind a fence at the dealer's showroom. In the medium in which we work it's a trivial matter to make a perfect copy and give to anybody in the world instantly."

Comments:

The process of hacking, which may be seen as a creative endeavor, does create many conflicts. The intellectual freedom encouraged by the Hackers at this conference is both positive and essential in a free society. Yet, computer piracy of software and information is emerging as a critical issue for the 1980's. ■

See also: Shelley Heller and Judith Axler Turner, "Software Piracy is Becoming Major Problem," **Honolulu Star-Bulletin**, April 14, 1985.

to be offering subjective opinions rather than objective fact, and forensic scientists are cautioned to keep a check on the quality control of their methods. ■

See also: "Crime Labs Criticized," **Honolulu Advertiser**, April 30, 1985.

INFORMATION AS PROPERTY

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and electronic mail services lack conventional rights of privacy and protection. In essence, then, the owner of the computer has control over everything inside his computer.

Hunter suggests that one solution to the problem of information abuse is to treat information as property. With this legal standing individuals may have control over how their personal information is used and disseminated. Such a solution creates many questions concerning the legal nature of information. Thus, it is the time, in Hunter's opinion, for "our legal system to craft a new framework for thinking about the future." ■

COMPUTER-LAUNCHED MISSILES

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Officially the U.S. does not have a launch-on-warning capability. However there is mounting evidence that such a capability is being developed, and Johnson, as well as others, point to statements from the defense departments' new Strategic Computer Initiative.

Johnson lost his case initially before a judge in San Francisco. The crux of the government's argument, which the judge accepted, was that Johnson was raising political and national security questions that could not be resolved by the courts. His appeal, filed earlier this month, will go before a three-member panel from the U.S. Court of Appeal.

See also: J. Raloff, "DOD Targets Fifth Generation Too", **Science News**, May 26, 1984. ■

LAW AND TECHNOLOGY:

Commercial Medical Research

"Medical Advances Stir Legal Mire"
Robert Furlow
Honolulu Star Bulletin
May 7, 1985

Summary:

The questions concerning what is acceptable medical research and the ethical considerations surrounding obtaining lab materials and marketing research findings are the subject of this article. There seems to be two major concerns surrounding modern medical research that are alarming to patients, researchers and physicians alike.

The first is the concern over the possible conflict of interest between the patient's welfare and product development (including new drugs) and using patient's tissues as research materials. It seems that patients may have less faith in their doctors' concern for their welfare, now that researchers can gain lucrative patents through the use of dying people's tissues.

The second concern, which is legal, centers on the patent rights and profits gained through the use of tissues for medical research. Should the patent and the profits go to the researcher whose hard work produced the new drug? Or, should the profits be split between the researcher and the patient, without whose tissues the development would not have been possible.

Legal precedence over the use of high technology maneuvers to reproduce and combat disease rests in a case now pending in California. Allen Wagner, counsel for the researchers, said that it was "clearly uncertain" whether there was a right of ownership of diseased tissue taken from patients, but he called for better legal guidelines from both the legislature and judicial system.

See also: "Research Issues: Who Owns a Patient's Cells?" **Nu Hou Kanawai**, Vol. I, No. 4, 1984.

Gene-Environment Interactions

"Urban Environment, Genetics, and Crime"
William F. Gabrielli Jr.
and Sarnoff A. Mednick
Criminology
November 1984

Summary:

It is believed that gene-environment interaction is important for the development of most of human behavior. This concept has been recently applied to the area of crime and the criminal. If criminal behavior fits the model of gene-environment interaction then many of the questions concerning criminal

The study tried to determine the extent to which environment and genetics interacted to produce criminal behavior.

behavior could be answered. This article attempts to pursue ways in which biological and sociological variables interact or act independently to influence criminal behavior.

DNA Identification

"Geneticists Develop DNA Fingerprinting"
Jeremy Cherfras
New Scientist
March 28, 1985

Summary:

Alec Jeffries and colleagues at the University of Leicester's genetics department have made DNA "fingerprints" that can distinguish between 54 members of a single family. The results were astonishing due to the variability of the genome (**Nature**, Vol. 314, p. 67). Each individual's pattern was different

The scientists used adopted male children whose biological parents were convicted of a crime and whose non-familial parents had no history of criminality. Neither the adopted parents nor the children knew of the biological parents' past history of criminality. The children lived in both urban and rural environments. The study tried to determine the extent to which environment and genetics interacted to produce criminal behavior.

Results showed that adoptees with criminal biological parents are a substantially higher risk for developing criminal behavior than those with non-criminal parents. Children raised in the urban environment also showed greater tendency toward criminality than their rural counterparts. This study, according to the authors, is the first of its kind and shows that both genetics and environment independently contribute toward criminal behavior, but the interaction is still unclear. ■

from all others, a unique genetic fingerprint. The pedigree survey even revealed a completely new mutant fragment cropping up in one of the children. (Paternity for this child was confirmed by several other tests.) The technique promises to develop into the most powerful method of DNA identification known to date.

The procedure is the subject of a patent application and many applications for DNA fingerprinting are foreseen. It will aid in work with genetic diseases, in paternity testing, in studying population biology, inbreeding, demography, and in forensic medicine. In addition, certain aspects will provide an insight into the mechanisms of recombination. ■

LAW AND SOCIETY:

Future Criminals

"The New Predators"
Steven Egger
The Futurist
April 1985

Summary:

Along with technological advances and social changes come new opportunities for criminal activity. Steven Egger suggests that such change will create new predatory groups as well as alter the mode of present criminal groups. Early identification of these emerging groups and their criminal tendencies is one step, he recommends, towards maintaining law and order in the future.

Future predatory groups identified are:

- (1) **Youth Gangs.** At present there are 2,200 gangs totaling some 96,000 members in 300 cities and towns across the U.S. . Current gangs are more powerful, active and sophisticated than traditional youth gangs.
- (2) **Vigilantes.** The feeling that no one cares and that the quality of life is deteriorating has resulted in a "get them before they get us" attitude.
- (3) **Technology Predators.** Criminal

World Citizen

"World Citizen Arrested; Filed Suit Against Reagan, Chernenko"
The Daily Prout Star
March 20, 1985

Summary:

Gary Davis renounced his U.S. citizenship in 1948 to become a "World Citizen." For the past 27 years he has promoted the idea of a world without states, attracting at least 250,000 registered World Citizens. Since he has no citizenship, Davis was arrested last week in Maine and turned over to the border patrol for deportation.

Recently Davis filed a suit at World Court charging Ronald Reagan and

exploitation of information technology will certainly increase with the computerization of society. The cost of computer crime is expected to exceed \$3 billion by the year 2000.

(4) **Child Predators.** With more working couples, unsupervised children are at high risk of being sexually exploited. According to the American Humane Society sexual abuse of children increased 200% between 1976-1980.

(5) **Serial Predators.** Such predators are becoming more mobile, engaging their prey in widely different areas.

(6) **Elderly Predators.** Older citizens feeling victimized by poverty, fear and frustration with an unresponsive government may become predators acting out of an instinct for survival.

Comments:

The first step in monitoring the changing complexion of law is to identify emerging criminal or predatory groups. The next step is to determine the likely responses the judicial system will take when faced with such problems as: massive gang disorders, widespread vigilantism, and costly computer theft. ■

Konstantin Chernenko with war crimes. The suit is historic in that it is the first filed in Geneva, Switzerland by an individual. According to Davis, a stateless person becomes a state unto himself, and should be recognized by the World Court.

Comments:

Davis's quest for a globe united by world citizens creates many complex legal and philosophical questions. In an age of high speed transportation and information transfer, many legal, political and economic issues frequently transcend borders and become internationalized. In the future the judicial system may have to consider what the legal implications will be if an individual is to be recognized as a state unto himself. ■

Students Sue University

"Yale Strike Suit"
Faye Silas
American Bar Association Journal
January 1985

Summary:

A strike by Local 34 of the Federation of University Employees has prompted 102 Yale University students to file a \$1.4 million class action suit against the University administration. The suit, *Albert vs. Yale University*, was filed in New Haven Superior Court and charges the University with breach of contract, unjustly enriching itself and engaging in unfair trade practices.

Richard Joelson, one of the parties in the suit states, "We paid for services we weren't getting, and felt (the university) should compensate us." Annually, each student at Yale pays approximately \$13,950 to attend classes and use the campus facilities. These facilities, which include libraries, dining halls, dormitories, and basic janitorial services, have been virtually shutdown by the strike. The students contend that the university is unjustly enriching itself by collecting the students' money and then failing to provide the services for which they were paid.

University officials would not comment on the lawsuit but the lawyer handling the case for the students said that a tuition refund and withdrawal from the university would be impossible. "These students have no choice...Where would they go in the middle of the semester?"

Comments:

This article is one of a group in the **American Bar Association Journal** dealing with suits against universities and colleges. There appears to be a trend toward a greater amount of legal action against university and college administrative leaders. While it seems that demonstrations and rallies, familiar in the 60's, are all but gone, students in the 80's are far from passive when they feel cheated. ■

LAW AND SOCIETY:

New Law Enrages Lawyers

"Lawyer Privilege Caught in Crossfire of War on Mob"
Robert E. Kessler
Honolulu Star-Bulletin
March 24, 1985

Summary:

The oldest confidential privilege has been between the lawyer and the client and all interaction has been traditionally protected. Recently, however, the introduction of the Tax Reform and Crime Control Acts has made it possible for a lawyer to be subpoenaed to testify about his client's financial status. The law requires lawyers to report clients who pay fees of more than \$10,000 in cash and allows the government to freeze and require forfeiture of assets, including lawyer's fees that it believes have come from illegal sources.

Louis Linden, executive director of the National Association of Criminal Defense Lawyers, says "the government is trying outside of court what they can't win in court." James Harmon, executive director of the President's Commission on Organized Crime said that there is a cadre of lawyers whose illegal activities provide "life support" for organized crime, and electronic surveillance and sting operations should be used to uncover them.

Prosecutors have begun issuing subpoenas requiring defense attorneys to disclose the amount of their client's fees and whether they were paid by a third party. Defense attorneys believe that these subpoenas will cause a breakdown of the lawyer-client relationship and will cause clients to not obtain the best defense possible. ■

See also: Charles Kelbley, "Lawyer Ethics on Trial," **Barrister Magazine**, Winter 1985.

Man's Best Friend

"User-unfriendly"
Forbes
January 28, 1985

Summary:

Are animals products? In some cases they may be, as far as the law is concerned. Or so a California Superior Court Judge ruled in a products liability case.

The Police Department bought a trained attack dog from a kennel. However, when the officer loosed the animal on a suspect, it became confused and turned on the officer, seriously injuring his hand. The policeman sued the kennel for \$500,000. Judge Irving A. Shimer ruled that the dog was a product, bred and trained and sold for a specific purpose. The four-legged "product" didn't function properly and injured the user--so the suit is within the law, he ruled.

SOCIAL ISSUES:

Whose Child Is It?

"Yours, Mine and Theirs"
Lori B. Andrews
Psychology Today
December 1984

Summary:

Modern medical developments in the use of alternative methods of conception are creating a new social structure of extended families. With vitro fertilization, surrogate motherhood, embryo transfer, embryo freezing and artificial insemination as options, a child may now have as many as five "parents": the egg donor, the sperm donor, the surrogate who bears the child and the couple who raises it.

The potential negative psychological effects of alternative conception techniques upon the parents and children have become of special

concern to law-makers. A bill proposed by Michigan State Representative Richard Fitzpatrick would require that a marriage counselor, psychologist or psychiatrist, counsel the couple who wish to use a form of alternative conception.

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couple who raises it.

Since the techniques of alternative conception are relatively new, most children are too young to be analyzed for the psychological effects of their unique birth. No one can predict their reactions upon learning that they were frozen or transferred as an embryo, that

they were conceived by a paid surrogate, or that they spent the first few days of their existence in a petri dish.

Comments:

Research indicates that many donors and surrogates do care at some level about the child they are creating. At present surrogate mothers have broken their contracts and kept their children. Also, at least two donors have established visitation rights to children created with their sperm. This complex relationship between the child, his surrogate parents and his genetic parents is creating very difficult questions concerning the family unit. ■

The harder we try to induce conformity to the law where conformity does not exist the more we seem to fail.

John Burton

SOCIAL ISSUES:

Delphi Poll

"Scenes of Future Perfect"

Owen Davies

Omni / May 1985

Summary:

Omni magazine conducted a Delphi poll of its readers to determine their feelings about future life and when specific social and technological steps would take place. The results of the poll and compilation show that in comparison to a similar poll taken in 1978, the respondents were much more conservative on almost all issues and also consistently more conservative than experts in each of the subject areas.

Four of the major categories used were: space, hard science, biomedicine and computer technology. In the field of computer technology, Omni readers generally agreed with the experts on when advances like robot servants and

information services would take place. In the field of space, the differences appeared between both respondents and the earlier survey and the experts from NASA. Generally, the answers to

... a general move towards conservatism, ...

questions concerning Mars missions, space sports, lunar and Mars bases, and intelligent life, ranged anywhere from a decade to a century more conservative than the NASA scientists. In questions on hard science, the respondents could not seem to agree on what developments were possible and when they

I am not an advocate for frequent changes in laws and constitutions, but those institutions must go hand in hand with the progress of the human mind. As that becomes more developed, and opinions change with change of circumstances, institutions must advance to keep pace with the times.

Thomas Jefferson

would occur. In biomedicine, the answers to questions concerning disease control, cloning, regeneration of limbs and organs, and life expectancy were again more conservative than the earlier survey and medical researchers and scientists.

Comments:

The results of a Delphi structured poll like this one, which is compared to a past poll and to expert opinions, tend to show not only in politics but also in scientific advancement and future scenarios, is occurring. ■

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

