

NU HOU KANAWAI

"Justice Horizons"

A NEWSLETTER OF ISSUES, TRENDS AND RESEARCH FINDINGS



LAW AND TECHNOLOGY:

Burn Out

"The Health Hazards of Computers"
Art Kleiner
Whole Earth Review
Fall 1985

Summary:

Personal Computers are proliferating at a terrific rate, at the home and the work place. While the potential benefits of micro-computers are apparent, little is known concerning the potential negative effects these dynamos may cause the humans which operate them. This article reviews the possible health hazards associated with P.C. use; non-ionizing radiation, x-rays, noise, glare and posture.

Most P.C.'s utilize video display terminals (VDTs) which, like T.V.'s, generate electromagnetic fields including x-rays, ultraviolet radiation, infrared light and low frequency radiation. Of primary concern is the extremely low frequency (ELF) non-ionizing radiation generated by P.C.'s. Documentation of the effects of such radiation is limited because unlike ionizing radiation, as x-rays, it does not alter the atomic molecular structure or substances through which it passes.

According to Ross Adely, "our bodies' communication network of hormones and nerve impulses are supplemented by a radio network of weak electromagnetic fields." Such findings may mean that our bodies are more sensitive to the types of electromagnetic fields generated by P.C.'s than previously thought. Researchers in Spain have found ELF fields to have a profound impact upon chick embryos resulting in malformed hearts and central nervous systems.

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Bodies in Limbo

"How The Dead Can Help the Living"
Harold Shane and Walter Daly
The Futurist
January/February 1986

Summary:

The issues raised over organ donation and life support techniques are not new. However, authors Shane and Daly have combined the two issues to raise the question, What should be done with the thousands of brain dead who leave a usable supply of bodies? They venture that, "the possibility of using the brain dead for tissue storage and other purposes has become a crucial topic for policy decisions."

Soon it will be possible to establish "neomortoria" units in hospitals where cadavers on life support systems could be housed. The benefits of such a facility would be: (1) organ storage, where a computerized inventory of major organs could be kept; (2) testing, where new drugs and technologies could be tested without harming volunteers; and (3) medical education, where doctors and nurses could perfect surgical and medical skills.

The moral issues regarding the use of "neomorts" (the brain dead) are emotional and complex. For example, how should brain dead be defined? In February 1984, Illinois medical technicians were startled by a cough from a 20-year old man whose supposedly lifeless body was being readied for organ removal surgery. Other key issues regard the dignity of the human body, equal access of available organs, and the cost of maintaining neomorts.

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Information Rights

"Do P.C. Records Threaten Privacy?"
P.C. Week
September 24, 1985

Summary:

P.C.'s are the ultimate information-gathering and record-collecting machines. However, the expansion of computer databases has enhanced the ability of computer operators to intrude on the lives of others. This P.C. Week editorial illustrates the importance of protecting personal information databases.

In the protection of personal information databases it is important that information managers take responsibility for protecting such records. Professor Robert Miller of Harvard Law School lists four steps to ensure responsible information management: (1) maintain strict auditing systems to keep information secure from illegitimate access; (2) ensure that personal records are accurate; (3) ensure that information is not used out of context; and (4) realize that all computer records have a **finite** life span.

It is Miller's view that Americans feel their right to privacy is eroding and that the computer is partly responsible. The increasing use of indiscriminate record-collecting is presently an impingement upon individual liberty. Therefore, it is important that the users and collectors of such information begin to do so in a judicious fashion. Miller recommends two ways of looking at electronic data which encourage the proper use of such

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LAW AND TECHNOLOGY:

Images of Reality

"The Computer Goes to Hollywood"
Stephen Manes
P.C. Magazine
November 26, 1985

Summary:

Recently, ABC took a bold but unpublicized leap forward in applying graphics-simulation and artificial-intelligence techniques to computer-related entertainment software. What ABC did was to produce a T.V. movie, *"Midas Valley"*, that was from script to visuals wholly generated by computer.

Modeled after evening dramas as *"Dynasty"* and *"Dallas"*, the theme of *"Midas Valley"* centers around machination in the California computer world and stars Robert Stack and Jean Simmons. However, Robert Stack as well as all of the programs other actors are total simulations recreated from digitally manipulated audio and video records of previous work. One character, Joseph Hacker, (note: the hacker name refers to computer pirates who have expertise in computer use and data manipulation) is totally fictional with his image and voice computer synthesized. To avoid union difficulties the producers paid all actors, including Hacker, the usual film fees.

In preview screenings audiences were fooled into assuming the action and actors were *"live"*, not simulated. Aside from some stiffness in motion and timing difficulties involving mouth movement and voice tracks, it is almost impossible to determine that the images projected are not physically real.

Although a visual success, the program was an entertainment flop. Still, the new concepts generated by the production of *"Midas Valley"* should impact the film and video industry for years to come. The script generation software runs under PC-DOS, the common personal computer disk operating system, and program developers are considering making the software available to the writing community. At present plans are being made to re-create the images of deceased actors and place them in new roles.

Comments:

From computer manipulation of data to the reincarnation of humans, the com-

puter revolution is striding forward into new concepts of reality and artificial intelligence. The emerging video culture of the 1980's is rapidly redefining how we as individuals perceive the world around us. There is a danger that this new technology will blur the line between entertainment and information. When technology crosses this line some form of control or regulation will need to be exercised by the courts. Such technology conjures up Orwellian images of Big Brother brought to life or deceased leaders which continue to rule through the magic of video.

See also: *"Digital Retouching,"* **NHK**, Vol. 11, No. 4, 1985

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However, these are preliminary findings and are not conclusive evidence that P.C. generated ELF fields can create similar problems in humans. At present there are no U.S. standards, only voluntary guidelines, for ELF radiation.

There have been reported clusters of miscarriages and cataracts at VDT worksites in the U.S., Canada and Europe. In San Francisco, an office survey of United Airlines reservations personnel showed a 50% rate of problem pregnancies between 1979-1983. Early cataract symptoms have also been identified among newspaper employees at the Baltimore Sun and the New York Times who use VDTs heavily. However, government investigators concluded that these and other similar events were not statistically significant.

Ergonomics provides the most widespread cause of health problems associated with computer usage. Poorly designed work stations can lead to a variety of problems including backaches, eye strain, and headaches. This article provides a variety of simple common sense remedies to such ergonomic problems. However, more severe problems associated with radiation lack any easy solutions and require further inquiry.

VDT health compensation issues are now beginning to impact court case-loads. Recently a secretary won a worker's compensation case involving VDT induced cataracts. Other settlements involved VDT-related health problems include eye ailments, wrist inflammation, and stress-related psychological

disorders.

See also: Kevin Streblo, *"VDT's and Health Risks,"* **Lotus**, Oct. 1985; *"VDT's Affect Eyes, Heart,"* **Futurist**, Dec. 1985; Trevor Williams, *"Visual Display Technology, Worker Disability and Work Organization,"* **Human Relations**, Nov. 1985.

BODIES IN LIMBO

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The authors note that at present there have been no actual sales of organs in the U.S. However, the potential for a black market in human body parts does exist. In 1983 a Virginia physician announced his intention to establish a kidney brokerage service. His organ source was to be impoverished people from overseas. The use of neomortaria units could prevent the potential problem of healthy people selling parts of their bodies. The authors propose that an international group of scholars and medical professionals gather to begin debate on this issue.

Comments:

Ten years ago in the movie *"Coma"*, the maintenance of cadavers for organ sale was science fiction. Today the fantasy of film is becoming reality. The use of neomortaria units is an extreme example of how rapidly technology can outstrip the ability of our institutions to deal with the issue they raise. The neomorts will be an issue for the courts not in the 21st century but probably the late 1980's.

INFORMATION RIGHTS

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information: (1) *"electronic records are not just blips on a screen, they represent living and breathing human beings"*; and (2) *"think of a database as if the secrets it contained were your own."*

Comments:

The personal computer revolution is a revolution of power, power of information. Whoever has access to computer generated, private information, possesses power to control, coerce, or manipulate others. In the past, the judicial system has been the unofficial guardian of individual liberty. However, expanding computer capabilities may eventually circumvent traditional methods employed to protect individual freedom.

ASIAN-PACIFIC LAW:

Legal Revolution

"The Struggle For Rule By Law"
AsiaWeek
December 13, 1985

Summary:

In China's present phase of modernization, the development of law and legal education is paramount. According to AsiaWeek, "the awareness is growing that China's modernization could be set back, if not sabotaged, in the absence of a firm foundation of laws to define and enforce its ground rule." As a result of this realization, legal education and the use of lawyers is growing rapidly. Since 1976 the number of law schools have increased from 8 to 43. Businesses have been quick to embrace the legal revolution as the role of state central planning declines. "The number of business units employing legal consultants has jumped from 441 in 1983 to 20,000 in mid-1985."

The drawback to the development of standardized law has been two-fold: (1) lack of legal knowledge on the part of the individual; and (2) the lack of judicial independence. According to Xu Dixin, a member of the NPC (National People's Congress) standing committee, "outside the large cities, legal education is so deficient that many cadres, not to mention ordinary folk, don't know it when they have infringed upon the law." In addition, says a Shanghai based legal scholar, "judges have little appreciation for the concept of judicial independence and they often stick closely to the local party's interpretation of the law."

In order to prevent legal illiteracy, the Chinese Communist Party (CCP) has vowed to rid the country of "famang" (the legally blind) in 5 years. All citizens have been asked to familiarize themselves with existing laws and rights. In the CCP's attempt to "give the law to the people," 90% of the nation's secondary schools now have special education classes.

Comments:

Although the Chinese are actively engaged in developing western laws, the preferred method for settling disputes is by "xieshang", consultation and reconciliation. While China's modernization is benefiting from Western legal

systems, the West may also benefit from Chinese traditions as "xieshang". The institutional practice of mediation can become a valuable adjunct to our present adversarial system of law.

A Crime In Whose Eyes

"The Cultural Defense"
Mark Thompson
Student Lawyer
September 1985

Summary:

Since 1970, California has experienced an influx of South East Asian and Latin American immigrants. As a result of this development, Southern California has surpassed New York as the most cosmopolitan area in the U.S., if not in the world. Such a diverse population (for example, 60 languages are spoken in Hollywood High School,) has created a number of challenges for the California courts. What happens, according to L.A. Deputy City Attorney Ernesto Acosta is that "you get a lot of people breaking the law not because they are criminals but because they do not understand what it means to break the law."

In many cases, a crime by American or Western legal and moral standards is an acceptable practice in other societies. The Hmong refugees from Laos provide one example of this difficult situation. To the Hmong people rape is an acceptable process of courtship, not a heinous crime. This practice is termed by anthropologists as "marriage by capture." As Thompson notes, "with 30,000 Hmong refugees in the Fresno area alone this practice has created a number of problems for the police and the courts."

The primary question involving the cultural defense is the validity of the tradition in the former country, whether it is valid in this country and for how many generations. It takes a period of time for immigrants to adjust to a new society and to be assimilated into the criminal justice system. Among newly arrived groups, such as the Vietnamese, it will be a generation or two before appreciable numbers graduate from law schools. Another reason for slow assimilation is that in addition to being

suspicious of officials, "Asians prefer business to law enforcement as a career."

The dilemma in dealing with crimes that appear to involve cultural differences rather than criminal intent has confronted the U.S. since the earliest wave of European immigrants. However, the use of the cultural defense is expanding beyond mass immigration groups to individuals. Facing the California Courts is the Fumiko Kimura case which involves a Japanese woman who, after learning of her husband's infidelity, tried to commit suicide by walking into the ocean with her two children. Although she was rescued, the children drowned. Subsequently, she was charged with murder. Using a cultural defense, Kimura has pleaded not guilty on the grounds that, in Japan, parent-child suicide is customary and far more socially acceptable than taking her own life and leaving the children behind.

CORRECTIONS:

Hard Time?

"Jailhouse Stock"
John Laforge
Utne Reader
December 85 / January 86

Summary:

According to this article by John Laforge, the newest growth industry for American investors is jails and prisons. Why is private industry entering the once public responsibility of corrections? One reason for the interest is the increasing numbers of white collar criminals, i.e. drunk drivers, who fear prison overcrowding, sex abuse and violence. A second reason is the high costs of corrections; state and federal government spent \$10 billion in 1984, during a period of declining budgets.

The rent-a-cell concept is booming in Los Angeles County. The county's new drunk driving laws have led to crowding in the county jail. Convicts afraid of assault or losing their jobs, usually white males, can have their lawyers make "reservations" in small local lockups where they pay between \$75 and \$80 per night. According to L.A. municipal Judge Terry Smerling, "there's money to be made, cities can make five or six figures a year by renting out

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LAW AND SOCIETY:

Defending The Environment

"What is Monkeywrenching?"

Dave Foreman

Utne Reader

October/November 1985

Summary:

Monkeywrenching is, according to the author of this article, a thoughtful and heroic, as well as illegal, defense of the wild. The goal of monkeywrenching is to protect the wilderness from timber cutting, road building, energy exploration, mining and development. By spiking trees and roads and damaging equipment, these individuals hope to make the costs of continued development prohibitive. Presently, eco-defenders are performing such acts of resistance from Maine to Hawaii.

Excerpts from his book **Earth First**, Dave Foreman lays down 11 basic principles for monkeywrenching: it is non-violent, not organized, individual, targeted, timely, widespread, diverse, fun, not revolutionary, simple, and deliberate. These eco-defenders strategically pick their targets for maximum results and avoid mindless vandalism or the use of explosives. Exposing themselves to arrest and injury, monkeywrenchers undertake their actions consciously and seriously. The ecoteur always thinks, "will this action help or hinder the protection of this place?" Similar to Greenpeace, the spirit of the movement is not one of violence and rebellion but of love in the defense of nature. These people, according to Foreman, "are engaged in the most moral of all actions; protecting life, defending the Earth."

Comments:

The impact of the environmental movement and environmental legislation waned considerably during the economic downturn of the early eighties. Renewed interest in the environment has been spurred by Green Party groups as well as individuals who fear permanent ecological damage may already have occurred. The emergence of "eco-activism" is a sign of individual frustration with the past and present attempts to protect America's natural resources. Although the intent of such activities are non-violent, accidental injuries may

occur and monkeywrenchers will be arrested. Such a scenario will thrust the courts and judges into a very difficult position, understanding environmental concerns while convicting non-violent protesters. Eco-activists are likely to have popular support and to be perceived as Robin Hood types standing up to the power and influence of government and business.

Promise or Passion

"Trial And Eros"

Amanda Spake

Mother Jones

July 1985

Summary:

What are our individual rights and responsibilities in bed? In the past, most sexually related disputes between consenting adults were dismissed by state courts. However, a recent legal settlement in California between John Gatfield and Barbara Allen has produced a new set of legal precedents concerning injuries (in this case ectopic pregnancy following sex with a presumed sterile male) sustained during sexual activities. This decision may generate a new era of "sexual liability" law as the Marvin v. Marvin case did with palimony.

In an era of sexuality complicated by birth control, abortion, artificial reproduction and sexually transmitted diseases, "sexual liability law" could become a new legal specialty. "Sexual liability law means that people will be made legally and financially responsible for what they say and do in that most private of places - the bedroom."

The right to privacy between consenting adults would seem to be beyond the powers of governmental intrusion. However, according to Mary Dunlap, who argued Allen's case, "the right to privacy is superseded and the cause actionable when any sexual lie results in serious physical injury - that is the crux of modern sexual liability law." A key focus of such arguments are sexually transmitted diseases as herpes and AIDS. Herpes presently afflicts 20 million Americans and yearly generates 600,000 new cases, each a potential lawsuit. While herpes may generate volumes of costly suits, AIDS may raise constitutional questions as the government

attempts to condemn certain sexual practices in the name of public safety.

In January 1984 the California Court of Appeals in supporting the right of a person to sue for being afflicted with herpes wrote, "the right of privacy is not absolute and in some cases is subordinate to the state's fundamental right to enact laws which promote public health, welfare and safety, even though such laws may invade the offenders right of privacy."

HARD TIME?

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jail space to paying inmates." In an industry which guarantees 100% occupancy, the potential for profit appears great. Corporations are rapidly taking over or managing prisons. E.F. Hutton, Merrill Lynch, Lehmann Brothers and Control Data have all taken advantage of tax-exempt lease purchase agreements.

Private jails do reduce costs to the state and ultimately the taxpayer but they also increase the potential for abuse. According to Amy and Dru Stanley, writing in **Nation**, "cost cutting by contractors competing for low bids does not bode well for inmates." Once out of public jurisdiction citizens often have no say over choice of administrators or prison practices. In fact the vice president of the largest private jail corporation, Correction Corporation of America, was in charge of the Arkansas prison system at a time when slave labor, lashings and electrical shocks were practiced, and a court characterized Arkansas prisons as "a dark and evil world completely alien to the free world."

Comments:

The use of pay prisons raises complex questions about our society and our legal system: (1) Why are prison populations growing so rapidly? (2) Is the government losing its ability to provide basic needs of society? (3) Does punishment generate deterrence? (4) Should crime and the suffering of others be a profitable enterprise for an organization? and (5) Should not legal punishment be assessed equally regardless of economic status? (6) Can private enterprise provide better prisoner care and rehabilitation?

"A law is valuable not because it is law, but because there is right in it."

Henry Ward Beecher

CRIMINAL JUSTICE:

Cost Of Doing Business

"Cracking Down on White-Collar Crime"

Linda Kephart
Hawaii Business
October 1985

Summary:

This article illustrates how law enforcement agencies in Hawaii are following a national trend in cracking down on white-collar crime and criminals. White-collar crime can be found in six main areas: (1) External white-collar crime—credit card fraud, counterfeiting; (2) Investment fraud—security and commodities fraud, land development scams; (3) Bankruptcy fraud—bogus companies, company takeovers; (4) Internal white-collar crime—pilferage and embezzlement; (5) Insurance fraud—over insurance, arson; (6) Computer crime—illegal data transfer, misuse of computer time.

In the past most companies did not wish to publicize cases of fraud and theft. Rather than prosecuting, many companies chalked up the loss as part of the cost of doing business. However, as Kephart points out, the economic downturn of the early 1980's brought out con artists and willing Hawaiian victims eager to make a fast and easy buck. As a result, Hawaii was hit by a number of large fraud cases; the \$2 million National Commodities case, the \$5 million nonexistent container scheme, the \$36 million Paradise Palms time-share scam and the 10 million plus Bishop, Baldwin, Rewald, Dillingham, and Wond, ponzi scheme. In addition to fraud cases, the incidence of employee theft also rose during the 1980 recession making the cost of theft prohibitive.

In response to this two-tiered problem, white-collar crime units stressing auditing and computer skills have been initiated in the Honolulu Prosecutor's Office, the Honolulu Police Department, the State Department of Commerce and Consumer Affairs, and the State Attorney General's Office.

Hawaii's businesses are also attacking this problem by intensifying their internal security programs. Retailers such as Sears, Longs Drug Stores, and Times Super Markets have successfully initiated strict internal security measures.

According to Bill Geenty, Loss Prevention Manager of Times, "only ten percent, compared to a national average 50-70 percent, of the company's loss is now due to internal theft." Geenty states, "one of the responsibilities every company has is not to make it (theft) tempting."

There are many problems facing white-collar crime units including limited resources to mount an investigation and a reluctance by companies to release sensitive information and to assist law enforcement officials. Still, a new trend is being established and more and more businesses are saying "no" to white-collar crime.

Meditation and Crime

"Maharishi Mecca: Upward Mobility In An Iowa Town"

James Atlas
New Republic
April 27, 1985

Summary:

There is an increasing amount of scientifically validated evidence that meditation, especially concentrated meditation involving a number of meditators, impacts societal development. In TM theory, if one percent of a population meditates, the other 99 percent reap the benefits.

Dr. Orme-Johnson found at a penitentiary near El Paso Texas that meditation makes the autonomic nervous system more stable. "The subjects who learned meditation were measurably less aggressive, less tense."

In addition, Dr. Charles Alexander, at the Walpole (Massachusetts) State Prison, found that not only did meditating improve the behavior of the subjects chosen for meditation but it impacted the prison as a whole. "Within a year, the recidivism dropped 33%, the number of murders dropped from seven to none."

Comments:

Similar results have been found by Fulbright Scholar, and Ananda Marga monk, Ananda Mitra in her book **Beyond the Superconscious Mind**.

However, more controversial is the alleged field affect. Meditators at Maharishi University in Iowa claim that during their conferences, where up to

7000 individuals meditate together, crime rates as well as traffic fatalities in the surrounding area have significantly decreased and "positive" indicators such as the stock market have increased. Thus, the inference is that meditation not only transforms the behavior of the meditator but also that of the local and global community.

This field effect finds some theoretical support from Rupert Sheldrake's **A New Science of Life**. He argues that there exist invisible fields that carry information between similar structures—morphic resonance. Preliminary tests have validated his theory. These fields provide a plausible explanation why certain habits or thought (such as meditation) can be carried across space and time and why once repeated can become a new condition, part of individual or collective "nature."

See also: Jeff Bloch, "We Got Mantras Right Here In River City", **Forbes**, March 24, 1986.

LAW AND SPACE:

Weightless Law

"Laws In Space"
Pamela Mendles
New Age
October 1985

Summary:

According to the author, "astrolaw" is increasing in importance as space settlement and long-term exploration goes from science fiction to science fact. This movement of Earth bound society into space should create novel legal issues. For example, can an amputee be considered legally disabled in a gravity free cabin where legs are useless? Or will space pregnancies be considered crimes given the risk to the fetus and the danger of bringing another passenger into a closed resource-scarce environment?

Professor Hamilton DeSaussure of Akron Law School and J. Henry Glazer of Hastings College of Law are studying the possibilities of space governance without courts, judges and jails. They hope space travel will help to forge an alternative to the adversarial nature of the U.S. legal system. In the effort to develop space mediation, rather than space litigation, Glazer desires space law to become, "a craft of a helping profession."

LAW:

Insuring Against Litigation

"The Expanding Cost of Tort Litigation"

William H. Wallace
Vital Speeches
November 15, 1985

Summary:

In his speech to the American Judges Association, April 19, 1985, William Wallace, President of the International Association of Insurance Counsel, warned that the cost of litigation threatens our legal system. Whether they be individuals, insurance companies or corporations, virtually all feel that the present system costs too much. Reasons why the legal system has become too costly are: (1) liberalization by courts in theories of recovery; (2) new causes of action which did not exist ten years ago; (3) continued abrogation or modification of traditional defenses; and (4) the development and threat of punitive

damages or prejudgment interest.

A task force consisting of the International Association of Insurance Counsel, the Federation of Insurance Counsel, etc., found ample evidence that the cost of litigation is high and the trend is for even higher costs. In 1950, the total value of legal services was less than \$1.5 billion; in 1982 it exceeded \$27 billion.

One area which has especially felt the impact of litigation costs is the insurance industry. In a 1982 Rand Corporation survey one-half of the insurance companies responding indicated legal expenses had more than doubled in the preceding five years. While this situation is a concern for insurance companies, ultimately it is the policy holder who pays the freight of such incurred costs.

The public's cost of supporting the litigation boom is enormous. According to Wallace, it is estimated that the 1982 public expenditures supporting tort litigation in all courts totalled \$325 million. Technology is offered as a solution to lowering legal costs. To improve efficiency and lower costs, Wallace recommends that the practitioner utilize the

latest in office technology for legal research. The litigation process may also benefit from technology by employing the latest in communications technology as videotaping depositions and telephone conferencing instead of pretrial hearings. The use of labor saving technology must be combined with a realization that middle ground must be sought so as to limit recoveries and bring into balance an affordable pendulum of justice.

"It is the spirit and not the form of law that keeps justice alive."

Justice Earl Warren

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.



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