



## ASIAN-PACIFIC LAW:

### Legal Renaissance

"Need Law Be Just Another  
Disabling Profession?"  
IFDA Dossier  
January/February 1986

#### Summary:

This article reports on a number of critiques and recommendations reached during the Consumers Association of Penang (CAP) seminar on innovation in legal education for alternative development in which 50 judges, lawyers, law teachers and legal activists from 13 Asian countries participated.

As a result of this seminar sponsored by the Network of Concerned Third World Lawyers, the following memorandum was issued. "The present legal

system is inadequate for the promotion of social justice which would give rise to human centered development alternatives. Most Asian law and ancillary support systems of courts and lawyers has been patterned after various colonial models. The importation and imposition of these alien legal systems as part of the colonial machinery of government did not take into consideration the needs of the local population."

In critiquing the western model of the judicial system used in Asia, the panelists cite problems of delivering aid to the poor and disadvantaged. Some of the main points made were:

(1) The Judiciary — Today's judiciary is largely a product of a privileged background, and there exists a public impatience with judicial remoteness, conservatism, and lack of vision and creativity in an era where society is ex-

periencing unprecedented change.

(2) Legal Education — The elitism of universities and passive teaching methods insulate law students from the social problems and legal needs of the poor.

(3) The Judicial Process — The adversarial nature of our legal structures places the victimized and less privileged majority of our population in a position of grave disadvantage.

(4) The Legal Profession — The practice of law is largely governed by materialistic goals rather than concepts of justice. Opportunism and self-interest often prevail over social obligation and needs of the poor and the disadvantaged.

The participants of this seminar feel that the essential problem with the

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### Two Views

"Concepts Of Law: China  
and the West"  
Asiaweek  
April 6, 1986

#### Summary:

In this article We-jeen Change, professor of law at the National Taiwan University, and Dr. Philip Baker, lecturer in law at London University's School of Oriental and African Studies, answer questions concerning China's legal modernization. Of especial concern during this discussion is how China's judicial system will mesh with the British oriented system of Hong Kong in 1997.

How does the Chinese legal system

differ from the Western model?

**Chang:** "In the West, individualism really started from Greek philosophy, reinforced by Roman Law and Christianity, which emphasized the independence of individuals. The Chinese socio-political background is much different. Socially, a person is not independent, he is part of the family or larger community."

**Baker:** "In China, people tend to think of relationships and friendly negotiations as the way of settling disputes. In the West, you go to the law first, whereas in China it is a last resort."

What will be Hong Kong's legal situation after 1997?

**Chang:** "Technical aspects of the two systems can be reconciled to a certain extent. But, unless the Chinese government respects the basic wishes of Hong Kong's people, it will harm not only

them but those in China."

**Baker:** "There is going to be tension with regard to the treatment of Hong Kong people and Hong Kong entities on the mainland... concerning activities not criminal under Hong Kong law but are regarded as contrary to mainland law."

How do Chinese and Western legal views differ on the independence of the judiciary?

**Chang:** "The West believes an independent judiciary is the best guarantee of individual freedom. In the traditional Chinese concept separation of powers is alien."

**Baker:** "In China the Judiciary is not independent from the legislature or the communist party."

See also: George Felkenes, "Criminal Justice in the People's Republic of China," **Judicature**, April/May, 1986.

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## SOCIAL ISSUES:

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### Liberty or Stability

*"Private Disobedience"*

Randall Scheel

*The Futurist*

May/June 1986

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#### Summary:

The author of this article feels that, "we are witnessing a new form of militancy in the U.S." "It can be called private disobedience and is characterized by deliberate acts of protest, sometimes violent, directed against the private sector." As examples, he cites bombing of abortion clinics, spiking of trees for logging, and sabotage of electronic information systems.

There are a number of reasons for the development of such activities: (1) the shift from a manufacturing economy to a service economy is contributing to a shrinking middle class; (2) those who are employed in the newer high-tech and service industries tend to be paid substantially less than their manufacturing forerunners; (3) computers are separating the country into classes of information rich and poor; and (4) computers and communications technologies are increasingly being used to monitor employees in the work place.

The alienation and protest behind this disobedience movement is rooted in the loss of confidence in institutions. Scheel notes, "private citizens do not commit dangerous and felonious acts out of a sense of irony, but out of a genuine anger and frustration." Because of this movement, Scheel feels that the public is susceptible to demagogic persuasion which seeks to change the system in a fundamental way. "These activists easily find fault, do not adjust well to living and working with others... and lack the sense of compromise our complex society requires."

#### Comments:

The key point in this article is obedience to the system regardless of whether or not it is meeting the needs of society and the environment. However, obedience does not align itself well with the concepts of freedom and independence. The present actions of disobedience is termed as militant which unfortunately denotes armed or military action. The majority of recorded incidents of independent actions

against "the system" were done with minimum violence and without cost to human life. Many groups, as Eco-activists which attempt to protect forest lands, act because laws are not protecting the environment from exploitation. The activities of individuals against both public and private institutions is an issue which presents difficult legal, social and moral problems for the Judiciary to answer in the future.

See also: "What is Monkeywrenching?" *NHK*, Vol. 3, No. 1, 1986.

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### Child's Play?

*"A New Generation of Radicals ?"*

John Stevenson

*Utne Reader*

June/July 1986

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#### Summary:

The author of this article has for the past year been interviewing teenagers, in the Chicago area, to gain insight to their social and political attitudes. Using a cross section of teens from punk to straight, from the suburb to the inner city, he contends that the prevailing impression of conformity, acquiescence and conservatism among teens is false. Behind the yuppie trend of careerism, materialism, and anti-drug use lies an emerging undercurrent of discontent. Stevenson states, "there is something new rising among teenagers, a new wave of political awareness, a new activism, a new radicalism... it is once again cool to be political."

Youngsters involved in "punk" appear to be the most politically active of this age group. Attempting to make a statement about their individuality through unusual dress, make-up and hair styles, they present a contrary image of normal appearance. However, within the punk movement there are various and unique sub-groups. There are Nazi punks, peace punks, death-rock punks and just plain punks with no ideology.

Stevenson makes note of two very prevalent and volatile issues in almost all of his interviews, racism and anarchy. The Nazi punks are racist who are violently opposed to race mixing. For this reason most punks are from middle class white families. Many of these teenagers also feel that the anarchy is the only venue available for

social and political change. One young anarchist states, "society is approaching its collapse... capitalism has reached the point where it has in fact no solutions."

As an undercurrent to the punk movement is a feeling of alienation from their families, community and society. But, the feeling these children have is best expressed by one 13-year old girl, "I think children all over the world (age 6 to 20) are unsatisfied with their government... we are all part of the whole."

#### Comments:

The dissatisfaction teen punks feel with the social system is in part caused by the declining status of the middle class, especially the blue collar mid-west areas of the country. With the economic and political emergence of minorities as Blacks, Asians and Hispanics they see their social position declining. But, to pass the punk movement off as a movement of disenfranchised children is a mistake. These children are: (1) taking a global view of economics, warfare, and pollution; and (2) afraid of the path that present international politics is leading to.

These members of various punk movement are often very young. Yet, these children have already obtained basic understanding of national and international politics. By the time these 12 and 13-year olds reach voting age, they will have a very radical perspective of politics. It can then be expected that the potential for radicalism and demonstrations in the 1990s will be extremely high.

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### LEGAL RENAISSANCE

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legal education lies in the educational process of lawyers. The panel then concluded with a number of recommendations concerning the education of the next generation of lawyers:

(1) New courses as Law and Poverty, Law and Society, Consumer and Environmental Law, Third World Jurisprudence, and Law Relating to Tribal Communities and Minorities should be implemented.

(2) Law schools should imbue students with the nobler values of making law serve the interests of the poor, and stress the social responsibility of lawyers.

(3) Legal education should not solely be confined in the law school classroom.

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## LAW AND TECHNOLOGY:

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### Electric Relationships

*"Love At First Byte"*  
Judith Hooper  
New Age Journal  
February 1986

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#### Summary:

Computer networking is rapidly expanding the concept of electronic society. Through computer networks as the Source and CompuServe, people can find electronic equivalents of encounter groups, academic seminars, dating services, poetry readings, fantasy novels, hobby clubs, and soap operas. For those who use such systems, the electronic medium helps to create an "electronic family or community, based on shared interest rather than geographical accident." In fact, one system creates a computer simulated town where members can meet, complete with a Main street, town square, pub and restaurant.

The computer network is also giving rise to new dialects as well as customs. For example: "Are you male or female?, is typed R U M or F or Morf." Socially significant is the fact that, "age, gender, race, physical characteristics and the like are invisible on-line, which means that a person is judged solely by the quality of his or her mind." In one case a white middle-aged professional man developed an on-line relationship with a black teenage girl with cerebral palsy. He proposed a meeting without knowledge of her condition. The situation was resolved through the help of professional people on-line, and she benefited from the knowledge that someone like that would be interested in her.

This process has developed a new form of eros, the "cognitive affair." Without risking the chance of physical incompatibility, strangers may share sexual fantasies. In such cases "you can be anybody, your partner can be idealized and love is limited only by the imagination."

In the network system there is no accountability, no central directory, people can lie, exaggerate or pretend. Hooper poses the question, "Is on-line a healthy society?" Her answer seems to be that the system provides an antidote to modern isolation, as well as a way for people, throughout the global com-

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### In The Mind's Eye

*"Mind Altering Software"*  
Corey Sandler  
P.C. Magazine  
February 19, 1986

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#### Summary:

The personal computer software industry has recently developed a new program for self-hypnosis and subliminal suggestion. The goal of these programs is to help the user achieve a deep state of mental relaxation and concentration and to place valued, constructive thoughts into your mind.

The self-hypnosis portion of the program presents a cascading series of rectangles drawing the eyes inward. According to the authors, the boxes begin moving at a rate just below the "alpha" brain wave level and then slow down to the "theta" level which is said to be the most conducive to a hypnotic state of relaxation and concentration.

Once this point is reached, subliminal suggestion begins. A message you have chosen will begin to flash on the screen at a pace which enters it directly to your subconscious. These messages flash rapidly, 30 millisecond minimum, which makes it barely visible on the screen. The key to the programs supposed success is the computers ability to display 30,000 repetitions in an eight-hour day while you continue going about your usual computer business.

The program authors suggest the question whether or not American business has incorporated subliminal suggestion into their plan of operation. Sandler notes that aside from the legal and moral problems, you still have to convince the person to sit at the terminal, and provide suggestions that remind rather than convince. To this he adds that flowers, candy, or a vacation may better achieve the intended result.

#### Comments:

The use of and controversy generated by subliminal messages is not new. Although there has been no national legislation on such messages, the FCC has regulated their use in advertising. However, in today's video age, spurred by the proliferation of personal computers, it is important that video technology and how it affects us be under-

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### Detecting Lies

*"The Deception Of Detection"*  
Wayne Biddle  
Discover  
March 1986

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#### Summary:

The use of lie detection for the government and police to detect spies and criminals is now common. However, the use of such testing is spreading into more general social application. The American Psychological Association reports that "60% of retailers, 50% of banks and 20% of large business perform some polygraph screening, with an examiner grossing over \$50,000 a year." Of concern to the author is whether these tests in there attempt to detect the guilty, or harm the innocent. The Office of Technology Assessment has found "meaningful scientific evidence of polygraph validity only in investigations of specific criminal incidents."

Basically, the polygraph is a very simply medical instrument. As Leonard Saxe, a professor of psychology at Boston University notes, "the polygraph doesn't detect lies; it merely records telltale signs of anxiety as increased pulse, breathing rate, and perspiration. You might be lying, thinking of family problems or just faking. On a more pragmatic level, the lie detector does work as long as the subject believes it."

Fooling the examiner by faking is a key topic to those seeking to disprove the validity of such testing. Douglas Williams, a former Oklahoma police polygraphist, has taught thousands of people how to beat the machine, which he calls an "insidious Orwellian instrument of torture." He suggests that by holding one's breath, gasping and tightening of the sphincter muscle during control questions the frightened and non-frightened response will look the same. Biofeedback, mental dissociation and drugs are other suggested ways to beat the machine.

If these machines are the sole measure of one's "honesty," the accuracy of the test is paramount. But, according to the OTA study, a polygraph security screening operation might detect one guilty person out of 1,000 employees. Assuming a very high rate of polygraph

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## LAW:

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### Software To Blame?

*"When Expert Systems  
Act Like Amateurs"*  
Anne Field  
Business Week  
June 2, 1986

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#### Summary:

This article asks the question, "Whose fault is it if you ask a computerized "expert system" for advice — on anything from finances to medical diagnostics — and it gives you the wrong suggestion or solution?" The IRS is prepared to lay at least partial responsibility upon software programmers. With the proliferation of home computers a number of software programs have been developed to assist people in preparing their tax returns. The IRS has passed a ruling which will penalize program creators as much as \$500 for every return that has an understatement.

Presently most software companies have not developed a long range strategy to protect themselves. Philip Cooper, chief executive of Palladian Software Inc. notes, "most companies are making it clear that their products can in no way be taken as the final word." "But, the legal system in this country may be counted on to lay fault on anyone who supplies anything to clients."

#### Comments:

This article touches on an emerging issue which will have major impact upon the burgeoning software industry. As computers move from an information gathering machine to a decision-making entity, they will have more vital impact upon individual lives. The operation and protection of the software's integrity will then be critical. This power over human decision-making offers the opportunity for electronic breakdown, delay or sabotage which may cost businesses thousands of dollars and people their lives.

During this present era of booming litigation and massive liability awards the judicial system will soon face software litigation. Also, this area presents another potential crisis for the insurance industry. Already responsible for massive liability awards, the insurance industry will no doubt have to limit or restrict policies for expert

systems particularly those used in the health industry for diagnostics. The rapid developments of the computer industry and the complex issues which it raises show no signs of abating in the near future. This trend may also require that the judicial system begin to utilize computer experts to aid the courts' decision-making in this sophisticated technological field.

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### More Than a Machine

*"The Future Of Personal Robots"*  
Mike Higgins  
The Futurist  
May/June 1986

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#### Summary:

In this article, author Mike Higgins highlights a number of issues which will accompany the progression of robot technology as it moves from the work place into the home. As a passive source of entertainment or as an educational adjunct, the robot has proven abilities for home use. But, the expansion of such tasks which require the robot to act independently as a servant, companion, or security guard, present difficulties because of the many complex interactions necessary.

In the future Higgins predicts that robots may assume the following roles: (1) as a companion and care giver for the elderly; (2) a child care supervisor; (3) a house servant and maid; (4) a roaming super sensitive security guard; (5) expert consultants; and (6) even a sexual surrogate.

As robot technology becomes more sophisticated and the appearance of the robot becomes more human like, many problems may begin to appear. On one hand, robots may be seen as "mechanical slaves" with supporters demanding civil rights. On the other, personal robots that appear human may be viewed as "evil" or "unnatural" creations which should be banned.

Accompanying the development of possibly self-aware super-robots will be the establishment of a new field of robotic law. For example, "there will be conflicts over liability and responsibility for accidental or deliberate damage and regulations specifying where robots are to be allowed." Ultimately the civil rights of robots may take the following form, "protection from total and irre-

versible loss of power (life), freedom from slave labor (liberty), and free choice of how to spend its time (the pursuit of happiness)."

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### Biting Bytes

*"Computer Parasites"*  
Perry Morrison  
The Futurist  
March/April 1986

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#### Summary:

This article illustrates that computer systems bear a striking resemblance to organic systems as the human body. As a result, these systems are open to parasitic type diseases. In the case of computers highly reproductive parasites could crash or kill as O/S (operating system). For example, an extraneous command is hidden in the system program; small, taking up little memory, it lays dormant until triggered by a key command. Once executed it may continue to rapidly reproduce itself and in its redundancy eat through the memory overloading the system.

In its simplest form a software parasite could act as an agent of sabotage by randomly or selectively destroying disk files, and interfering with memory. A software parasite could override file protection and transmit file contents to another machine. Highly sophisticated parasite programs, which utilize satellites and fiber optics to communicate, may be extremely difficult to identify. Therefore, as a solution it may be necessary to create software which will hunt down parasites and destroy them before they can damage the system. The system's protection must be automated because of the inefficiency of human intervention.

One of the most innovative ideas presented by Morrison is the use of "computer hackers" to protect software integrity, particularly for national defense. He contends that, rather than a threat to information systems, hackers present an untapped resource for the U.S. He notes, "given the potential of software parasites and related software weaponry, the strategic interests of the U.S. could be served by regarding the activities of these individuals and groups of computer enthusiasts as a misapplication of useful talents."

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## COURT ADMINISTRATION:

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### Filings Explosion On Kauai Due

*"In a Jam" and "High on Kauai"*

Lucy Jokiel

Hawaii Business

July 1986

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#### Summary:

These two articles present the pros and cons of tourist oriented development on Kauai. Since Hurricane Iwa in 1982, Kauai's economy has rebounded spectacularly. According to Jokiel, "Thanks to stepped up promotional efforts and the opening of two new hotels, tourism is booming on Kauai. Residents have welcomed the economic growth and, more specifically, the jobs that tourism brings."

Tourism, however, has also led to numerous problems. These include traffic jams, and an infrastructure that can no longer sustain the resident population. The question, according to Eric Honoma, head of the private non-profit Kauai Economic Development Board, "How do we attain a balance between quality growth and provision of jobs, and at the same time minimize the environmental and social impact of tourism."

Many of Kauai's 46,000 residents are asking how their Island can manage with one million yearly visitors and between 60,000 and 70,000 vehicles. Controlled growth proponent Councilwoman JoAnn Yukimura argues that along with the visitor industry "comes the recurrence of problems like tight housing for local people and traffic that reminds some of Oahu or Los Angeles." The dependence on tourism and its social costs is exacerbated by the decline of sugar.

Another dark side of the tourism-led economic boom has been drug addiction. Kauai has experienced a nearly 150 percent increase in cocaine related cases. In fact, marijuana and cocaine are seen as one of Kauai's fastest growing industries.

#### Comments:

As tourism increases, so does crime according to one recent study by Meda Chesney-Lind of the University of Hawaii Youth Development and Research Center. Thus we can certainly expect an increase in criminal

activities in Kauai. These will include drug crimes, car thefts, fraud, prostitution, burglary, terrorism as well as numerous other criminal cases associated with tourist based economic booms. We can also expect divisions in Kauai's community over development. See also: Noel Kent, **Islands Under the Influence**; Sohaï Inayatullah, "Judicial and Social Impacts of Economic Growth in Kona," The Hawaii Judiciary, 1983; and Meda Chesney-Lind, Ian Lind and Hasan Schaafsma, "Salient Factors in Hawaii's Crime Rate," University of Hawaii, 1983.

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### ELECTRIC RELATIONSHIPS

*Continued from Page 3*

munity, to freely exchange thoughts and ideas.

#### Comments:

The development of an electronic on-line network society should present many novel implications for society and its institutions. The freedom of the system, while dissolving inhibitions may encourage negative, counter productive behavior. For example, uninhibited discussions may lead to psychological manipulation of a networker which, according to Lindsay Van Gelder, may be equivalent to "mind rape." Personal information may be traded or bartered, in violation of one's privacy. Also, through the development of a criminal on-line network, illegal or illicit information may be exchanged in a rapid and untraceable fashion.

Escapism on-line may be carried to an extreme as the fear of sexually transmitted disease grows. Eventually the result may be one of total isolation from contact with reality and the rest of the community. The absorption into electric world may warp the individual's ability to distinguish between the computer world and the real world.

The potential for the development of aberrant or criminal behavior and actions over such on-line systems creates interesting questions for the judicial system of the future. Is electronic rape, emotional or psychological, possible without physical penetration? Is all information on such a system public access or private, like a phone? Can the police wire tap or monitor an on-line system legally? Will computer addicts viably be able to claim computer, electronic or video insanity as a defense for illegal action?

See also: Thane Peterson, "Why The French Are In Love With Videotex," **Business Week**, January 10, 1986.

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### IN THE MIND'S EYE

*Continued from Page 3*

stood and controlled. The use of such messages on computers may have a number of ramifications: (1) software designers may instill messages within the program encouraging users not to illegally copy material; (2) data processing companies may use subliminal messages to get computer operators to work at a faster pace; (3) grade school computers may flash encouraging messages to motivate students to achieve higher grades or be patriotic; and (4) programs which people pull down from computer network billboards may be re-encoded with subliminal messages which are self-destructive. In sum, subliminal messages can bring self-improvement or a living nightmare. Research and regulation is needed before this technology begins to generate new forms of litigation concerning subliminally induced criminal behavior.

See also: "Subliminal Communication," **NHK**, Vol. 1, No. 4., 1984.

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### DETECTING LIES

*Continued from Page 3*

validity, say 95%, one leak or spy might be identified as deceitful but so might 50 innocent employees. Because of such danger to the innocent, there is legislation pending which would outlaw poly-graphing in the private sector. However, the law is not expected to pass the House until it is so written that it does not "step on the toes of the national security establishment."

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### BITING BYTES

*Continued from Page 4*

#### Comments:

In our expanding computer society we are increasingly reliant upon computers. The potential for disaster caused by the spreading of computer parasites could be of epidemic proportions, literally a computer plague. Computer hackers, though mavericks, are experts in software technology and should be recognized for their talent and creativity which benefits the computer industry and society.

See also: "Keep Designing," **NHK**, Vol. 2, No. 3, 1985.

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## LAW AND TECHNOLOGY:

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### Expensive Glitches

*"Liability Issue Confronts  
Software Firms"*  
P.C. Week  
August 12, 1986

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#### Summary:

This editorial concerns the conflict between software developers and users concerning computer program liability. Citing a recent case involving a Florida construction company and Lotus Corporation, P.C. Week notes the unrealistic attitude the computer software industry has towards liability, where all responsibility is shifted from the developer to the user.

The authors agree with the computer industry that users should take great care in using software properly and that double checking output is essential. However they state, "in truth there are bugs in program code, probably in every major piece of commercial software, and eventually if not already someone is going to incur a loss, of

money and eventually life because of a software bug and through no fault of their own."

For this reason, the computer industry faces serious potential problems. The following are suggestions which the authors feel the industry should consider: (1) To implement warranty guidelines of the Association of Data Processing and Service Organization (ADPSO) for developers to repair and replace faulty programs; (2) To work with the community to set standards for the allocation of liability risk; (3) To work with the insurance industry to seek ways to provide coverage to protect users and publishers.

The article concludes by stating, "such protections will generate costs to consumers and slower software development but these mechanisms are necessary to minimize future damage."

#### Comments:

This editorial is calling for some proactive decision-making on the part of the computer industry, the insurance industry, the legislature and the judicial system. The litigation crisis is one which

has greatly damaged American industry. It is vital that a lesson be learned from this, and actions be taken in the computer industry to prevent a similar litigation crisis. If the industry becomes burdened by excessive liability litigation, it will greatly diminish the computer revolution which has brought so many changes to global society. Now is the time to begin forming legislation to protect society and the computer industry.

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*You have to explore the edges to see  
where the middle is going.*

Stewart Brand

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**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.**



## NU HOU KANAWAI

*"Justice Horizons"*

A Newsletter of Issues, Trends and Research Findings

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