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Book Reviews


Much of the recent writing on computers and jurimetrics has spent too much time on speculation about the applications of computers to law sometime in the future. To the credit of this book, 75 per cent of its content describes what has already taken place in legal research, in law office and court house management systems, and in all the substantive areas of legal relations affected by exploding technology. A second weakness of modern literature has been a failure to address itself to an audience with no computer background and a tendency to drop symbols which the reader is supposed to understand. Again to the credit of this editor, the text has been presented on a level appropriate for the unmathematically-inclined lawyer.

The format follows the pattern presently fashionable for charting unknown waters: i.e., gathering a panel of experts who write individual subsections. Of the 20 authors, 17 have law degrees, 6 are practicing in law firms, 3 are practicing as corporate or agency counsel, 4 are law professors, and 7 are involved in computer management activity. These backgrounds indicate the breadth of practical legal experience drawn upon in the book.

One of the more valuable parts of the book for the uninitiated is the first chapter entitled “Introduction to Machine Methods.” This begins by explaining how a lawyer without a computer can simply use cards with holes punched along the edges, an edge notcher, and a knitting needle to record data for retrieval. Progressing through a description of the presently available typing machines which can produce documents from a combination of stored “boiler plate” and original insertions, the chapter covers the basic principles, applications, and equipment now available for punched card processing, computer programming, and the extent to which image storage systems are possible. What becomes eminently clear is that the machine capability and theoretical application have arrived, but the “soft-ware” effort of bringing them to routines in law practice and administration is extremely expensive. Some of the developments which promise economy are the hook-up on leased time to the “computer utility company” and
the substitution of human "soft-ware" programming by machines which create the programs for other machines.

After these initial groundings for the reader, more specific, detailed projects of machine application to legal practice are described. The oldest (1960) and most obvious use so far is the searching of statutory material for specific words, phases, or passages which the machine can rapidly print out in response to increasingly complex questions. The uses in comparative and total legislative research are reflected by the fact that seven state governments already are using the systems. Less fruitful so far have been the half dozen different reported projects setting up search and retrieval systems for case law in limited areas such as tax, comptroller general decisions, the Northeastern Reporter, and gas and oil decisions. Less ambitious, a manually operated lawyer "desk top" operation is also being developed for specialty areas to handle up to 1700 cases on related subjects. Some experimental work has been done in predicting judicial decisions. More practically, an estate planning analysis service, which automatically calculates various elements of estate tax on alternative plans developed by having the client answer checklist questions, is already available to lawyers on a subscription basis. The complex economics of managing a large law office have caused two offices to install computer techniques for their own accounting records as to personnel, billing and cost analysis. The increasing availability of economical machine accounting systems to small businesses will accelerate the trend to their appearance in smaller law offices.

Moving from law office to courthouse, the computer systems are in for a field day. Here sadly enough, the projects appear to be only in the planning stage. But the common sense of an automated civil and criminal docket system, in short the "judicial data center" with total and instantaneous recall and indexing of names, dates, motions, judgments and status of cases, cannot be lightly put aside as science-fiction. Turning to both the administrative agency process and the "big" courtroom trial, large amounts of raw complex data may be organized and recorded in machine-retrievable form. Any problem in the law depending on analysis of mass data is ripe for computer study. Legislative redistricting by computer, for example, might seem fantastic. However, its claim to rapid calculation according to given equality norms without consideration of non-neutral political factors almost resulted in its use in the redistricting of Connecticut. Again, the possibility in law schools of playing legal games on computers is as yet untried, but computer games have already made headway in other educational contexts. The book also takes a short flight through
the uses of Symbolic Logic in the arts of legislative drafting.

The lawyer's focus on this new technology is not only turned inward toward the systems within his office, the courthouse, and the legislature, but it is also turned outward to the daily life of commerce where the computer has brought a revolution. Here we have new versions of the good, old-fashioned class-room hypotheticals: how do you apply all the old legal concepts to new sets of facts? For example, counseling a client and approving his Contracts to purchase a computer or to lease computer time is a new, but now typical experience for lawyers. The experts in the book offer their tips: e.g., cost estimates of programming always run low; the biggest risk of ownership is not electric failure but rapid obsolescence by new technology; unless other provisions are drafted, the programmers will “own” the program; the most important protection is the preventive maintenance obligation.

Further substantive law aspects are developing. One area evolves around the Property rights in the “soft-ware.” As between the manufacturer of a computer, the program developers, the service companies, and the users, what is subject to patent, copyright, and trade secret, and how does the lawyer go about protecting this “new property”? In the field of Labor Law an increasing number of past and prospective disputes have centered around the decision of management to eliminate jobs by installing a computer or subcontracting for a computer service. Computer failure and error can cause huge losses. Insurance policies thus have now been issued to cover the risk. Though no Tort cases have yet arisen, automation will bring the inevitable tracing of losses and damages back to people bearing different ownership and design relations to the machines and programs. Corporation counsel must now consider whether there is a duty to use a computer and how the adoption of a computer must be supervised to maintain required, accessible, usable records. A directly significant area is Evidence where courts are struggling with business records coded on machine tape both at the discovery and presentation stage, along with all the traditional evidentiary concepts applied to stored data. The implications for Taxation are pervasive; many are already upon us: central filing, total instantaneous recall, cross check auditing by the government. For the taxpayer, automatic tax returns are already computerized from machine accounting data, and alternative machine appraisals of different approaches for tax treatment are being made. The central problem is defining what must be kept and in what form for purposes of audit and burden of proof. Banking law, under the impact of Magnetic Ink Character Recognition System on checks, is being tested
to accommodate the capacity for humans to err in a new form and soon will have to accommodate the same element in telephonic credit systems. Real Property law, as yet untouched, awaits a whole new era when the now developed land coding and recording systems can be actually installed and made operational with computer aid.

Although the book is the work of twenty authors, repetition and inflation have been kept to a minimum. And though there have been magazine accounts of significant legal applications not mentioned in this book (e.g., the jury verdict prediction service out of Cleveland, and the patent tracing service out of Detroit), the breadth of the book is vast, and, in any event, does not purport to be exhaustive. Neither does the book undertake the many unexplored implications for human interests in the computerized society or for the lawyer-client relationship in an automated legal practice. But as an introductory handbook on a down-to-earth level, the book does its job well. Too bad that, like the computers it describes, the book can only look forward to early obsolescence.

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Most lawyers are familiar with some of the intricacies of the marital deduction permitted by the federal estate tax statute. This deduction is allowable up to maximum deduction of 50 percent of the adjusted gross estate, for property included in the gross estate of the deceased spouse, whether it passes to the survivor under the decedent's will or by intestacy. It may also apply to other items, such as jointly held property, life insurance, and certain inter vivos transfers, if these items are includible in the gross estate and pass either outright or under defined statutory conditions to the survivor.

Lawyers are equally well aware of the will forms, or so-called formula clauses, which have been developed since passage of the estate tax marital deduction in 1948. These are intended to achieve the maximum marital deduction for the estate by using language which qualifies the exact allowable amount, and no more than that amount, for the deduction. The forms for marital deduction will