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Book Reviews

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BOOK REVIEWS

LAW AND ELECTRONICS: The Challenge of a New Era,* Edited, with a Foreword, by Edgar A. Jones, Jr., San Francisco: Matthew Bender & Company, 1962. Pp. 373. $10.00.

Because *Law and Electronics* reports on the *first* national conference devoted to a consideration of the implications of computer technology, lawyers who expect to be practicing in the computer age should read it. Hardly an industry or service in this country remains unaffected in some degree by the computer revolution. Few individuals or groups can long escape the need for expert legal advice concerning one or another use of electronic and related devices and the legal effects of such uses. For reasons to be discussed later, practicing lawyers are not the only persons for whom the book should be recommended reading. The questions implicit in the conference goal range far beyond the bench and bar into areas yet to be probed by lawyer and layman.

Organized under the sponsorship of the U.C.L.A. Chancellor's Committee for Interdisciplinary Studies of Law and the Administration of Justice, the conference focused on several problems and problem areas, on descriptions of current research and investigation, and on proposals for future programs and projects under the following headings: Electronics and the Administration of Justice; The Language of the Machine and the Language of the Law; Logic and Law; and the Element of Predictability in Judicial Decision Making. While the principal papers dealt with only a few aspects of the legal profession's role in the era of automata, conference discussions covered a wide range of practical and theoretical questions that set the stage for a second conference in 1962.[1]

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* The Proceedings of the First National Law and Electronics Conference, Lake Arrowhead, California, October 21-23, 1960. Sponsored by the U.C.L.A. Chancellor's Committee of Interdisciplinary Studies of Law and the Administration of Justice, and University Extension, University of California.

1. "The summary program of the second Conference, suggested in large part by the discussions at the first, is as follows: Demonstrations of man-machine systems in the Systems Simulation Research Laboratory of the System Development Corporation; Law, Electronics and the Problems of Interdisciplinary Understanding; Survey of Electronic Data Processing Relevant to the Administration of Justice; The Extent to which a Consensus Is Attainable Concerning the Fundamental Legal Postulates of a Free Society; Appellate Function, Judical Decision, and the Role of the Computer;

Readers unfamiliar with the small flow of intramural communication concerning ways in which the legal profession can begin to enjoy the benefits of electronic data processing paraphernalia,[2] will find in the first two chapters a readable summary of many arguments for and some of the problems inherent in the conversion of law libraries into electronic data storage, processing and retrieval centers. H. P. Edmundson's explanation of machine language presupposes something more than a totally naive audience, but the remarks by Richard Hayden and John Horty and the panelists for the first two sessions supplement those of the hardware expert and are instructive for persons unacquainted with computer programming mystique and with current projects involving the storage of statutory and case law in computers.

Chapter 3 on Logic and Law is a convenient survey of Layman Allen's diverse interests that derive from his perception of the relationships between modern logics and legal language. From an initial concern with problems of legal drafting, he has moved on to a consideration of ways in which the "man" component of man-machine systems can adapt legal language so as to make more efficient use of machines than is possible with traditional modes of expression.

Lee Loevinger's contribution in Chapter 4 is a stimulating inquiry reaching far beyond his stipulated subject — prediction of judicial decisions. Readers heretofore alienated by the piddling exercises exhibited in much of the existing literature on this subject should find Judge Loevinger's thoughtful commentary a refreshing, and perhaps persuasive, argument for reconsideration of prediction and probabilistic thinking in law.

Each of the four sessions was followed by conference discussion. Summary reports of the issues raised would have been easier to read than the edited transcripts that follow the principal papers. Within the limitations of the

Problems Involved in Establishing Accessibility to Trial Court Data; and Future Developments in Information Retrieval and Their Implications Relative to the Preservation of a Free Society." p. iv.

2. See M.U.L.L. (Modern Uses of Logic in Law), quarterly published by the American Bar Association Special Committee on Electronic Data Retrieval in collaboration with the Yale Law School. See also, symposium: **Jurimetrics,** LAW & CONTEMPORARY PROB. (Winter 1963).

format used, however, the editor skillfully captured much of the conference spirit by retaining the wit (especially that of Arnold Dumey), overstatement (such as, computers "absorb, organize and lay bare what today must, for lack of accessibility, be regarded as a kind of subconscious of the human race" p. 8), and sharp assault that characterizes interdisciplinary debate. Unfortunately, the participants and the editor lapsed into unenlightening cliche by allusions to "Procrustean solutions" (p. 6), "the dehumanizing potential of computers" (p. 5), and "contrived stereotype solutions committed to the machine for rote recitation upon inquiry" (p. 6). Common sense rose from time to time to counteract the distracting effects of such talk. Said one impatient conferee: "I haven't observed lately any law libraries practicing law, and I don't expect to see computing machines practicing law any more than law libraries practice. It's as simple as that." (p. 139)

The last chapter is an edited transcript of the final session. From it the reader should turn back, as in *Finnegan's Wake*, to Edgar Jones' Introduction and Foreword for a summary of conference results. There, on second reading, one gets a clearer picture of what was and what was *not* considered in this conference.

The broader implications, both positive and negative, of the computer revolution are described by editor Jones as

> Liberation (or foreclosure) of man from routine mental work . . . with the consequent release (or unemployment) of his mental energies for creative (or destructive) thinking to a degree not previously possible (or necessary). (p. 9)

To cope with these alternatives is the unsolicited task of our entire society.

In specifying a division of labor appropriate for those trained in the law, the sponsors of the conference undertook to seek means for achieving "justice in a society committed to maintaining the maximum degree of individual free action" in the context of automation and automata. (pp. 1,2) Recalling Capek and Orwell, the editor expressed "hope that

it is sufficiently appalling in the prospect that thoughtful and able men and women will bestir themselves so that our basic commitment to human dignity shall not be subverted by unwise or simply unguided evolutions of machine techniques dissociated from their impact on human values." (p. 6) Some of the discussions touched upon the implications of data retrieval as it relates to individual liberty. Allusions were made to the existence of a "tremendous potential for the infringement of the liberty of the individual," (p. 129) but no further inquiry into these matters seems to have developed.[3] Certainly the conference agenda, outlined above, was far less comprehensive than the conference goal would suggest.

Those who are pursuing the goal of *achieving justice in a society committed to maintaining the maximum degree of individual free action* face gigantic tasks of problem articulation and skill recruitment. Readers of this volume might ask who in our community is charting the future course of law and lawyers in the electronic age? Who, for example, is bold enough to predict even a hundred foreseeable "new" fact situations that are likely to challenge traditional ways of allocating authority and legal responsibility? Who is beginning to sketch the rough profile of the institutions and practices — legal and extralegal — that will develop in the coming decades, and who, with adequate intellectual and financial resources, is making an effort to change the shape of both?[4]

The conference focused not on these queries but upon the identification of that band of revolutionaries who, with armies of electronic machines, promise someday to free the lawyer of his despised labor. It is in this more narrow context, therefore, that the usefulness of these proceedings should be considered.

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3. See n. 1, **supra.**

4. Occasional typographical misprints do not reflect serious discredit on the scholarship or mechanics of issuing such a volume, but one gross error deriving, no doubt, from the hazards of transcribing from tape recorded sessions must be corrected. One "Ed Mitely" is cited in the text at p. 243 and in the index as well as the author of a paper on "Symbolic Logic in the Interpretation of Documents." The proper reference is to Berkeley, **Boolean Algebra (The Techniques for Manipulating 'And,' 'Or,' 'Not,' and Conditions) and Applications to Insurance,** 26 RECORD OF AM. INST. OF ACTUARIES 373 (1937), 27 **id.** 157 (1938).

The editor appropriately chided the universities, foundations and legal scholars for "twitting themselves about juke box judgments with button pushing idiots spewing out decisions, while the serious evolution of the science of computer information retrieval proceeds through its vital threshold phase. . .without their influence." (p. 7) Engineer Myron Tribus expressed the hope that

> out of a conference like this there might come some pressure to establish special research posts in universitities, where practicing lawyers or judges or others could go for sabbaticals from their professional positions to the universities and engage in research. I believe that research should be done not only by those who are "called" to it, but also by those who are forced to do it because the problems they face today don't yield to the tools they have. (p.137)

Assuming that all of the conditions favorable to the establishment of such posts in universities can be met by some institution somewhere within a reasonable time, would it not be wise to extend the suggested list of research candidates to the lawbook publishers, our silent partners in law? Their responses to the need for new tools will have profound effects upon the way we respond to the challenges of the computer age. If we propose a marriage with the machines, who outranks the publishers among the wedding guests? Librarian J. M. Jacobstein reminded the conference that "You cannot get good lawyers or good indexers now, to currently index our material. . . . But someone has to index this material. How are we going to get law school graduates to index material for machines when we can't get them to do it now?" (p. 341) Elsewhere, the editor voiced a commonly held opinion when he said that we "shudder at the prospect" of having the existing body of indexes, digests, and citators

> automatically and without critical appraisal put into the machine so as to perpetuate it for the next three hundred years. One of the things we are rather hopeful about is that maybe we can get away from the labor of the inexperienced and unimaginative and get to labors which will reflect a higher level of competence in the pursuit of justice. (p. 147)

The point to be made here is that in this era of fashionable dialogue among scholars and practitioners of various other disciplines the publishers should be involved. It is *their* communications, not the learned journals, that appear on every lawyer's shelf and that *guide* and *limit* his creative research into the language of the law. Publishers have much to teach, and perhaps more to learn, in future inquiries into the application of electronic data processing to legal materials.

On another level, it was suggested that a lawyers' soliloquy might well precede further dialogue. Commenting that his own profession had learned much when it began investigating how engineers reasoned as they did their work, Mr. Tribus suggested that lawyers might find in a self-survey valuable data on which to base future research. This suggestion may be covered by one of the projects "of immediate practical importance and long-range research value" described by the editor in the following terms: "A study of the psychological and physiological factors in solving legal problems and making legal decisions." (p. 16) Such a study should certainly include investigations designed to record what lawyers do, why they say they do it, and how much what they are doing costs, all as a preliminary factual basis for the investigation of possible uses of electronic data processing devices in law practice. If we had a rough catalog of the decisions that are made by lawyers in their daily practice, an estimate of which are usual and typical and which are exceptional, we would be in a far better position to survey the potential utility of the new machines. The only people who can provide such information are the practitioners themselves. Doctors and other scientists frequently spend hours or weeks as guinea pigs in their efforts to obtain significant information for basic research. Are there any lawyers among us who are willing to permit their days to be clocked in time-and-motion studies? Will any of them permit each of his decisions to be questioned, recorded, to be probed for explanation in terms of strategy, motive, in order to provide the raw data upon which researchers could work?

Research has been mentioned throughout *Law and Electronics* and in this review. How often it has communicated the range of activities intended to be covered by the

term is a matter of speculation. Practitioners have their young associates, judges their law clerks, public officials their research staffs, and professors their research assistants. To date, however, there exists no generally accepted, no meaningful definition of the terms "basic research" or "research and development" in the law. These terms, if applicable at all, mean something quite different from a hunt for the case in point, for the relevant statute, for the next document in a chain of title. "Basic research" means, instead, the expenditure of time, personnel, effort and money to explorations in problem areas which presently, or in the near future, are bound to bear down upon the legal profession and for which traditional legal training has not provided appropriate solutions or techniques.

If this concept is converted into a program for action by the group at U.C.L.A. that set these national conferences in motion — or by any other institution that hopes to turn out lawyers in the 1960's who think like lawyers of the '70's and '80's — what are the necessary preconditions for success? Institutional flexibility or tolerance for unorthodoxy, access to experimental equipment at reasonable rates, a nucleus group of highly motivated researchers with subject-matter skills of wide range within and without the law, a well-articulated goal and a comprehensive agenda that can accomodate a variety of extensive and intensive probes into problems of varying scope — all are essential to the realization of creative means for achieving justice in a society committed to maintaining the maximum degree of individual free action.

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