Articles by Maurer Faculty

Faculty Scholarship

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Annual Survey: 1966

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ANNUAL SURVEY: 1966

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I. Articles in Domestic Journals

1. *Air Force JAG L. Rev.* — LITE—Legal Information Thru Electronics, A Symposium: C. A. Kelley, LITE in Perspective; R. P. Davis, The LITE System; D. C. Dietemann, Using LITE for Research Purposes, and LITE in Action; J. O. Rittenhouse, Jr., Indexing by Computer (lite); J. Sieburg, LITE Developmental Activities; C. S. Mallow, Jr., Reflections of a LITE User; Anon., Procedures for Using the LITE System. Vol. 8, pp. 5-51. Nov.-Dec. '66.

2. *American Bar Association Journal* — Counseling the Computer User. R. P. Bigelow. Vol. 52, p. 461. May '66.

   This article provides a brief outline of some factors that should be considered by lawyers in counseling clients considering the use of computers in their business. Mr. Bigelow's discussion includes areas in which a computer could be used, competitors' practices, labor problems, and possibilities of liability arising out of the use or nonuse of computers. In addition, the lawyer is advised of problems of computer contracts, computer insurance, and the admissibility of computer-produced evidence.

3. *American Bar Association Journal* — Project: Automated Legal Research. M. S. Landes. Vol. 52, p. 730. August '66.

   This article notes that a computer performs only five basic tasks: (1) information storage; (2) comparing or matching symbols; (3) evaluation of relative rank of symbols; (4) assessing of the result of matching or ranking; and (5) arithmetic operations. However, these operations are performed at incredible

speed and can be useful in legal research. The article also briefly describes a method used by a New York firm to locate case references through computer searches of an index of "legal adjectives" or "descriptors" from cases, and problems met in using the full texts of cases rather than an index of "descriptors."

4. *Bulletin of the Copyright Society of the U.S.A.* – Information Retrieval and the Copyright Law. D. J. Cunningham. Vol. 14, p. 22, October '66.

This article briefly reviews the capabilities of "the 'state of the art' in information retrieval today" and the current copyright arguments relating to the storage of copyrighted material in computers. It concludes with a note that "information storage and retrieval systems are. . .here to stay" and they should be used "to the benefit of all parties concerned."

5. *Copyright Law Symposium* – Copyright Protection for Computer Programs. John F. Banzhaff III. Vol. 14, p. 118. 1966.

This article examines the problem of copyright protection for computer programs. It contains a brief explanation of computers and their operation, arguments pro and con on the copyrightability of programs, an examination of the scope of the protection programs would have under the copyright law, a discussion of the problems involved in detecting and providing infringement, and a consideration of "whether public policy would be served by granting copyright protection to computer programs." The author concludes that what remains is "a gradual acceptance of the new protection by computer manufacturers, users, and service bureaus and the judicial determination of appropriate standards for the copyright protection of consumer programs."

6. *George Washington Law Review* – Retrieving Case Law by Computer; Fact, Fiction, and Future. I. Kayton. Vol. 35, p. 1. October '66.

The author tells how case law may be retrieved by computer and the problems of such research from the springboard of a 1952 change in United States patent law. He includes a "Lawyer's Guide to Computer Case Law Retrieval Systems."

7. *International & Comparative Law Quarterly* – Computers and International Law. D. Harris. Vol. 15, p. 551. April '66.

The author briefly describes advantages of electronic data retrieval in legal work and expresses the opinion that it would be. especially valuable in international law work because the materials are, in many cases inadequately indexed and comprehensive libraries are rare. The only work in the field that was known to the author when he wrote was that "by Horty at the University of Pittsburgh."

8. *Journal of the Patent Office Society* – Modern Systems of Information Retrieval at the U.S. Patent Office. G. A. Munafo. Vol. 48, p. 500. August '66.

The title aptly describes the article, which describes and briefly discusses the modern information retrieval systems in use at the United States Patent Office. A bibliography of 114 entries follows the article.

9. *Journal of Taxation* – Computer Installations Must be Adapted to Tax Audit Necessities. D. I. Lamont. Vol. 25, p. 302. November '66.

The author discusses the problems, the alternatives, and the ways to establish the needed procedure accompanying the computer revolution in business with respect to tax matters. He discusses computer technology, the Internal Revenue audit requirements, computer evidence in court, and the good and bad effects of the use of computers in tax auditing. The article shows that the addition of computers in business must be accompanied by proper planning for changes in tax auditing.

10. *Journal of Taxation* – Impact of Computers on Tax Practice Today: What They Can Do For The IRS and Tax Men. M. Rogovin. Vol. 25, p. 112. August '66.

The author offers insights into the new use of computers in (1) tax returns for the practitioner, (2) tax research, and (3) automatic data processing for the Internal Revenue Service. He lists the universities, private foundations, and government agencies dealing with computer research and what they have found with regard to their use in the tax field.

11. *Journal of Taxation* – New Uses for the Computer: How ADP Helps Write New Laws. Vol. 25, p. 178. September '66.

This article discusses the new role played by computers in providing lawmakers with quick and accurate information about the impact of proposed tax bills on revenue. The author describes Assistant Secretary of the Treasury Surrey's report on the impact of computers on tax practice.

12. *Law and Contemporary Problems* – "Files": Legal Controls Over the Accuracy and Accessibility of Stored Personal Data. K. L. Karst. Vol. 31, p. 342. Spring '66.

Although this article is not generally related to Jurimetrics, beginning on page 359 is a discussion of computer-stored information. It mentions problems of tapping of the computer by others, and accidental or purposeful interrogation of the computer where it is shared by more than one user.

13. *Law Library Journal* – Automation and the Private Law Library: A Panel. W. D. Murphy, Chairman, Application of Mechanical Devices to Processing in Private Law Libraries. R. Sloane; The Possibilities of Information and Dissemination in Private Law Libraries. L. F. Jessup: A Computer Application in One Private Law Library. R. J. Roth. Vol. 59, p. 22. February '66.

This article contains a discussion of the effects of the legal information explosion on private law libraries and suggestions on how to live with it and control it. The panelists present uniform profiles of the daily activities of a law library and its librarian. The main question was whether daily tasks could be performed more easily and efficiently if machines and computers were used. The conclusion is that the use of library machines is a great help to those engaged in library science.

14. *New York University Institute on Federal Taxation* – ADP–Analysis of Its Operation and Results. R. L. Jack. Vol. 24, p. 99 ('66).

This article describes the electronic data processing system of the Internal Revenue Service, including its advantage to the Government and to taxpayers.

15. *Oklahoma Bar Association Journal* – Computer and the Law. L. Garwin. Vol. 37, p. 1265. June 25, 1966.

This article reviews the various "interfaces" that exist between the computer and the law. It discusses the benefits that the computer revolution can bestow on the lawyer in the office, in the courtroom, and in the legislature, and points out the need for training in the use of computers. The bibliography included is extensive.

16. *Public Administration Review* – Automation, Systems Engineering, and Public Administration: Observations and Reflections on the California Experience. I. R. Hoos. Vol. 26, p. 311. December '66.

The author discusses the use of electronic data retrieval in government. He concludes that "computer technology, appropriately used, could improve the decision-making and planning processes so vital to the nation's well-being." At the same time, he cautions that "our prized conceptions" may require a defense against the impersonal thrust of technology.

17. *Texas International Law Forum* – United Nations Treaty Series Project as Computerized Jurisprudence. P. H. Rohn. The Nomenclature of Treaties: A Quantitative Analysis. J. A. Lejnieks; Finding the Law of Expropriation: Traditional v. Quantitative Research. W. M. Vaughn. Vol. 2, p. 167. Summer '66.

According to these articles, computer printouts and other data available from the United Nations Treaty Series have shed light on international law in largely unexplored areas. The use of computers may produce a global distribution of international law in measurable and perhaps predictable patterns.

18. *Title News* – Automation–To Date: A Panel (Ptak, Nelson, Jr., Sheetz, Waddell). Vol. 45, p. 104. January '66.

The article sets forth results of a workshop session in which current developments in electronic devices are described and examples of utilization discussed. The discussion includes computers, duplicating machines, copiers, microfilm, and optical scanning in the context of real property title work.

19. *Trusts & Estates* – Automation: Are Trust Officers Necessary? N. McClave, Jr. Vol. 105, p. 1149. December '66.

This article deals with the coming computer age and its effect on the banking industry. The problems of automation are no longer problems only of the big trust departments. They are common to the entire trust industry, the large and the small alike. . . . The electronic computer is moving rapidly from a cost cutting processor of paper to a new role as an unprecedented tool of management.

20. *Vanderbilt Law Review* – Legal Research–Computer Retrieval of Statutory Law and Decisional Law. Vol. 19, p. 905. June '66.

According to the author, legal research is traditionally a slow, tedious process. Because of their speed and accuracy, computers may provide a solution to these problems. The article describes work done by "John F. Horty and his staff at the University of Pittsburgh Health Law Center" in developing a computer searching system for statutory law, and the decisional law search approaches developed by Robert A. Wilson, Research Director of the Southwestern Legal Foundation, the late Robert T. Morgan of Oklahoma State

University, and the joint Bar Foundation–International Business Machine Corporation research project. Computers may help lawyers by reducing their research time and even reducing library expense.

21. *Villanova Law Review* – American Legal Realists and an Empirical Science of Law. D. H. Moskowitz. Vol. 11, p. 480. Spring '66.

The author discusses "the descriptive theories" of law ("what officials do about disputes") and "the explanatory theories" of law (why officials do what they do). He espouses development of "an empirical science of law." Such a science would be an aid in predicting legal decisions and informing the profession of changes in legal rules.

II. Articles in Foreign Journals

1. *Canadian Bar Journal* – Computer Impact on Law, Business and Finance. W. L. S. Trivett. Vol. 9, p. 206. June '66.

This article is concerned with the revolutionary impact on society of computer technology. The author discusses three reasons why lawyers "should quickly come to grips with the computer revolution." These reasons are (1) duty to clients, (2) necessity of an adequate understanding of computers, and (3) the economical factor.

2. *Canadian Bar Review* – Jurimetrics: The Scientific Method in Legal Research. P. Meyer. Vol. 4, p. 1. March '66.

This article is based on a paper given on June 9, 1965, at the annual meeting of the Association of Canadian Law Teachers, held at the University of British Columbia, Vancouver. It discusses basic ideas of jurimetrics as viewed by the author. Areas of discussion include:

(1) data storage and retrieval;
(2) analysis of complex evidence;
(3) prediction of judgments;
(4) legal drafting and textual ambiguities; and
(5) law reform.

The goal of the article is to introduce the developing field of jurimetrics including computer utilization and use of the symbolism of Boolean algebra in a legal context.

3. *Sydney Law Review* – Some Aspects of Recent Contributions to Logic in The Service of Law. Illmar Tammelo. Vol. 5, p. 261. September '66.

The author, reader in International Law and Jurisprudence at the University of Sydney, reviews concepts of logic in the law beginning with a book by Abraham Traunce, published in 1588, entitled "The Lawiers Logike." He concludes with reviews of recent Spanish and French contributions. He believes that modern symbolic logic is useful, but that traditional logic has not outlived its usefulness.

III. Federal Developments

1. "Government Electronic Data Processing Systems," Hearings by House Post Office and Civil Service Committee, 516 p. June 14, 15, 28, 29, 1966.

2. A. I. Lebowitz, "Mechanization of the USAEC Library."
     This pamphlet describes the Atomic Energy Commission's system of indexing legislative documents of the 89th Congress.

3. In 1966, machinery was set in motion by the Federal Communications Commission to determine whether or not computer services combined with the interstate network of communications constitute a public utility. By a Notice of Inquiry, Docket No. 16979, issued by the Commission on November 10, 1966, interested parties were invited to submit their views and supporting data. The deadline for submissions has been extended several times. Further inquiry may be directed to the Secretary of the Commission, Ben F. Waple, Washington, D.C.

4. The Department of Justice is investigating IBM and the computer industry. There is little documentation at present.

5. On August 8, 1966, the Patent Office held hearings on the question of whether or not computer programs should be patentable. Many views were expressed, but nothing decided. See 150 U.S. Patent Quarterly No. 6 at II-VII.

6. Whether or not computer programs should be copyrightable was another much discussed question in 1966. No conclusions were reached. The Copyright Office is still considering the problem. See Nelson, G. J., Copyrightability of Computer Programs. 7 Ariz. L. Rev. 204-218 (Spring 1966).

IV. State Developments

See "Automation and the Public Service: An Annotated Bibliography," Public Administration Service ("Public Automated Systems Service"?),1313 E. 60th Street, Chicago, 60637, 1966.

V. Courts and Judicial Developments

1. California (Superior and Municipal Courts). 1967 Annual Report of the Administrative Office of the California Courts, pages 173-177.
     The Administrative Office of the California Courts made a survey in 1966 "to determine the extent to which California's superior and municipal courts are using data processing equipment to perform clerical, statistical and managerial functions." As of July, 1966 the survey disclosed:

> Twelve superior courts are utilizing data processing equipment. In all but the Los Angeles and San Diego Superior Courts, however, the machines are used on a very limited basis, e.g., to prepare an index of filings or lists for jury panels, or to make statistical compilations.
> Municipal courts are making far more extensive use of such equipment than are superior courts. This is because municipal courts handle large volumes of parking and non-parking traffic citations which are particularly well suited for

machine processing. Of the 71 municipal courts in existence at the time of the survey, 33 responded that they are using automatic data processing machines to perform one or more functions. However, only 11 of the 33 courts reported widespread usage of the machines; the remaining 22 courts indicated that this equipment is performing only a limited number of functions.

The use of data processing machines for court calendaring purposes is exceedingly limited. Five courts reported such use, Los Angeles, San Diego and Orange County Superior Courts and the San Diego and Oakland-Piedmont Municipal Courts, but in each instance only a small segment of the calendering process is performed by machines.

Most of the courts using data processing machines either secure these services from a centralized county machine unit, from another court, as is the case in Los Angeles County, or from another department of county government. Only five courts have their own tabulating and data processing equipment, San Diego, Los Angeles and Sacramento Municipal Courts and Los Angeles and San Diego Superior Courts.

The prospect for increasing use of automatic data processing machines to perform court functions in the future is very bright. Forty-three courts reported they expect machines to perform a larger number of functions within the next few years. Of these 43 courts, 35 were municipal courts.

2. Colorado (Civil and Criminal Courts, Denver). Letter dated February 17. 1967, from Stephen E. Furth of IBM to Allen Harris.

A data processing center using tape computer equipment is serving the civil and criminal courts in these areas: jury activity accounting, alimony payment accounting, and scheduling of trials and proceedings.

3. District of Columbia (Court of General Sessions). Letter dated February 17, 1967, from Stephen E. Furth of IBM to Allen Harris.

This court has put its criminal court docket records and indexing on computer disk files. However, most of the machine time is committed to traffic ticket processing. It is expected that civil court files will be programmed shortly.

4. Georgia (Fulton County Courts). Letter dated February 17, 1967, from Stephen E. Furth of IBM to Allen Harris.

The data processing center has a computer printout routine for a type of court order to execute judgments.

5. Illinois (Circuit Court, Cook County). National Observer for February 13, 1967, at page 4, columns 2-4.

It is reported that this court uses a computer to "computerize" the personal injury caseload. Thus, "the computer has isolated up to 16,000 cases that court officials might be able to dispose of quickly without trial."

6. New Jersey (Essex County Court). Letter dated February 17, 1967, from Stephen E. Furth of IBM to Allen Harris.

The judges of Essex County and the New Jersey Court Administrator are working on the installation of an electronic data processing system for the county court.

7. New York (Criminal Court, New York City). Interview by Allen Harris with T. R. O'Connell of IBM in March, 1966.

A computer is in use in the traffic division of this court.

8. New York (Court of Appeals). Interview by Allen Harris with James M. Flavin in March, 1966.

James M. Flavin, the Official State Reporter, is trying to develop a feasible electronic system for case law retrieval for the Court of Appeals.

9. New York (Judicial Conference). Interview by Allen Harris with Lawrence N. Marcus, Counsel to the Judicial Conference of New York State, March, 1966.

The Judicial Conference plans to use its computer to evaluate statewide sentencing practices.

10. Pennsylvania (City and County Court System, Philadelphia). Letter dated February 17, 1967, from Stephen E. Furth of IBM to Allen Harris.

The city and county court system has ordered a computer for record keeping and statistical work.

VI. Conferences

1. The Tri-State Conference on a Comprehensive-Unified-Land-Data-System, sponsored by The University of Cincinatti and The Economic Research Service of the United States Department of Agriculture, was held at the University of Cincinnati, Cincinnati, Ohio, December 9 and 10, 1966.

2. A nationwide conference, sponsored by New York University, on the subject "The Large-Scale Public E.D.P. System: Its Problems and Prospects," was held in New York City in April, 1966.

3. In July 1966, at both the Appellate Judges Seminar (held annually at New York University Law School for Judges of the highest state appellate courts and United States Circuit Courts of Appeal) and the Intermediate Appellate Judges Seminar (held annually at New York University Law School for Judges of Intermediate State Appellate Courts) Allen Harris conducted a session on the impact of electronic data processing on the Courts.

4. A conference on the impact of computers on the tax practice, sponsored by the National Law Center of the George Washington University and the Federal Bar Association, was held in Washington, D. C., June 9-10, 1966. Speakers included Commissioner Sheldon S. Cohen of the Internal Revenue Service; Mitchel Rogovin, Assistant Attorney General (Tax Division), Department of Justice; and Mortimer Caplin, former Commissioner of the Internal Revenue Service and a Trustee of the University.

VII. Foreign Developments

An ambitious project for coordination of legal automation projects throughout the world is now under way under the auspices of the Committee on Computer Methods in International Law of the World Peace Through Law Center. This committee has scheduled a meeting to be held in Geneva, Switzerland, during the week of July 9, 1967. One of the papers to be presented is by Professor

Colin Tapper of Magdalen College, Oxford University, England, on the subject of "World Cooperation in the Mechanization of Legal Information Retrieval."

The World Peace Through Law Center in Geneva plans to install a central computer that will store summary data on individual projects around the world. The program is in its formative stage, but will be of continuing interest.

A group, headed by Brussels lawyer Baron Eduard Houtart, is computerizing Belgian law. The University of Montpellier in France is programming parts of the French law.

Other interested European lawyers include J. W. Witsen Elias of The Hague, C. J. C. McOustra of London, Professor Lucian Mehl of Paris, and Franklin L. Gurley of Paris.

Indexing

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During the past decade much has been written about the defects of available commercial indexes to legal materials—"indexes" being understood broadly to include digests and key-number systems as well as alphabetical word-lists—and about the superiority of more scientific systems which make use of computers and other electronic equipment. But retrieval of documents by computer, apart from restricted fields (mostly statutory), remains experimental. We know more about what computers can do in indexing and document retrieval than we do about the construction and functioning of indexes. In fact, we do not know enough about the construction and functioning of existing methods of legal document retrieval. That they are inadequate is clear, but it would be useful to know which of their defects are the result of the "information explosion," which the result of unskillful application of the system, which the result of inflexibility or maladaptation to change and growth, and which the result of faulty original design. The answers to these questions, or to some of them, might lead to a better understanding of the respective roles of men and machines in retrieval by computer. Some current literature gives the uncomfortable impression that although human indexers are unreliable—because of stupidity, ignorance, or forgetfulness—the computer can reliably be expected to give us less than we want in some respects and more in others. One inevitably wonders whether it wouldn't be cheaper to pay for good human judgment at current prices than to try to program a computer for functions that it seems to resist.

The computer can get rid at a stroke of hierarchical indexes and their numerous possibilities of error in preparation and use, and it can lead us instantly to those of the many cases under a particular key number which are indexed under any term we want. There remains considerable latitude for the searcher in finding the right synonyms and analogies and in devising a search strategy that will minimize his time and labor. The most time-consuming part of an index-digest search is not picking terms and key-numbers to search (although this process takes time and can be shortened with the aid of a good thesaurus),