COMMENT

COMPUTER RETRIEVAL OF THE LAW: A CHALLENGE TO THE CONCEPT OF UNAUTHORIZED PRACTICE?

When Professor Henry Hart was clerking for Mr. Justice Brandeis, he was requested to find precedent for a rather obscure point of law. Clerk Hart told the Justice that he had run the digests high and low and found nothing on the requested point. "Whereupon L.D.B. fixed him with a steely eye and asked, 'Have you thumbed the Reports?'" 1

The day is long past when such a request would provoke nothing more than surprise; today's law clerk, conscious of the terrifying flood of legal literature, would be incredulous. One study has indicated that the number of words reported yearly in the United States Supreme Court Reports is presently increasing at the rate of 8,000 words a year. 2 The same work has shown a similar increase in all the national reporters. 3 From 1658 to 1879, a period of some two hundred and twenty-two years, the reported cases numbered about 407,000. From 1879 to 1932 they numbered about 1,121,000, 4 and are estimated to be increasing at the rate of 25,000 per year. 5 Furthermore, as one commentator has remarked, "[t]he rate of growth of the statutes is even more exponentially determined than in the instance of case law, and all of them pale into insignificance relative to the rate of growth of legal periodical literature." 6

Lawyers and law librarians, concerned that the sheer volume of legal literature will eventually impair its efficient use, have attracted the aid of the computer sciences in devising systems of storage and retrieval. These systems have ranged from mechanical adaptations of

3 Id. at 17. The average annual increase shown for all the West regional reporters between 1938 and 1948 was 1.75 million words.
6 Kayton, Retrieving Case Law by Computer: Fact, Fiction and Future, 35 GEO. WASH. L. REV. 1, 6-7 (1966). Some indication of the inundation of all types of legal literature is given by the accumulation of volumes in the legal collection of the Library of Congress. In 1900, the Library held 100,000 volumes on law. By 1930 this number had increased to 250,000 and, by 1958, to 950,000. ALLEN, BROOKS & JAMES, supra note 2, at 22.
present manual research and retrieval methods \(^7\) to retrieval by statistical analysis of stored bodies of "indexless" legal literature.\(^8\) However, as these systems become increasingly more sophisticated, a greater degree of scientific and legal expertise is needed to successfully weld the fields of law and computer programming into a manageable whole.

So long as these projects were still largely experimental in nature, the fact that legal skill might be involved in operations performed on legal materials was largely a matter of private concern; recently, however, several groups have been organized to offer computerized research and retrieval services on a commercial basis. In the context of this commercial application, it becomes relevant to examine the sale of these computerized research services in the light of the ethical and operational standards of the legal profession. How near do these services come to the ill-defined boundaries of "unauthorized practice" of the law? Is it proper to advertise or incorporate these services, when the very notion of the "sale" of legal services is fraught with suspicious overtones of unauthorized practice? A corollary to these questions is one of purpose: for whom are these services intended, and to whom are they to be made available? At present, they are, in the main, restricted to members of the legal profession. However, if these operations do prove to be commercially feasible and supplant present research methods, undefined ethical issues may deprive the layman of ready access to the body of the law.

**The Techniques of Computer Retrieval of the Law**

Two of the basic legal research sources to which most lawyers would immediately make reference are the West Digest System and its companion, the indexed National Reporter System. It is evident that these bibliographic or book tool services, sanctioned by long legal use, are ethically unimpeachable.\(^9\) Any mechanical adaptation of these services which would use the same principles of indexing and would stand in the same relation to a lawyer as would a West Reporter would


\(^8\) See, e.g., the system proposed by John C. Lyons of the Graduate School of Public Law, George Washington University, in Eldridge & Dennis, *The Computer as a Tool for Legal Research*, 28 LAW & CONTEMP. PROB. 78, 92-94 (1963).

\(^9\) Because these constitute the basic source of the law for most lawyers, and the index system is the only presently feasible way of conducting research, their necessity makes their irreproachability seem self-evident. Nevertheless the frontispiece to every Commerce Clearing House Tax Court Reporter contains the following disclaimer:

This publication is designed to provide accurate and authoritative information in regard to the subject matter concerned. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting, or other professional service. If legal advice . . . is required, the service of a competent professional person should be sought. (Emphasis added.)

This disclaimer is prescribed in American Bar Ass'n, *Statements of Principles with Respect to the Practice of Law* 8 (Sept. 1, 1964) (from a Declaration of Principles jointly adopted by a Committee of the A.B.A. and a Committee of Publishers and Associations).
Such a mechanical adaptation is the "Point of Law" approach developed in 1957 at Oklahoma State University by the late Professor Robert T. Morgan. Trained personnel (presumably similar to those employed by West Publishing Company) would analyze the legal materials for issues and concepts, extracting a word, phrase or paragraph which identifies the issue or concept under analysis. Each concept is assigned a numerical machine code. The computer produces an alphabetical list of the concept-identifying words or phrases, each with its corresponding code number. From this list, the searcher selects those concepts which identify his problem and presents its corresponding number to the computer, which then searches its memory bank for the appropriate references.

One of several characteristics common to both the West and Morgan systems is that the exercise of any legal skill in constructing the research system is completed before any person would have access to them. These systems are simply the vehicle of the reported law. They pass along, as an added convenience to the searcher, a pre-structured system of general categories which are derived from an analysis of past legal events. The formulation of these categories calls for a legal skill much like that involved in assembling a case book: it is the scholar's analysis of historical legal fact rather than the practitioner's concern with a present factual situation.

That a computerized retrieval service invites comparison with manual legal services is recognized by the American Bar Association's Standing Committee on Unauthorized Practice of Law. In the Committee's last annual report, it was noted that "basically, Electronic Data Retrieval is unobjectionable so long as it is merely a means of storing textual information for later retrieval. In that respect, it is similar to a library. So long as it is a library, there would appear to be no unauthorized practice of law problems present." 33 UNAUTHORIZED PRACTICE NEWS 70 (Nos. 1 & 2, 1967).

The point of law approach may be characterized as an automated and vastly accelerated West Key Number type system.

... It cannot, however, be fairly characterized as more than a speeding up of our present unsophisticated methods.

The advantages of this duplication of the West system are threefold:

(1) the computer is capable of searching through its memory bank for numerous "concepts" at the same time;

(2) all of the "law" in the memory bank is scanned. When no further response is given by the machine, one can be certain that there is no more "law" on the subject;

(3) the researcher is able to select the type of machine output he desires—citations, citations and text, and so forth.


For a brief description of the process and personnel employed by West and other services such as U.S. Law Week and Shepard's Citations, see M. Mayer, THE LAWYERS 427-28, 433-34, 437-38 (1967).
Another characteristic common to the two systems is that the success of the searcher in obtaining a satisfactory answer to his problem depends not only on the facility with which he can use the digest-index system, but also on the degree of clarity with which he can frame his problem. The legal analysis of a particular factual situation is performed by him before he frames his question for the computer. In the West system, he is then provided with a written "data bank" of West Reporters to which he is given specific references and cross-citations so that he can find the appropriate page himself; in the Morgan system, the machine performs the task of locating the page or citation by rapidly scanning the stored data. Once the retrieved materials are placed in the hands of the searcher, he must exercise his legal judgment in assessing their application to the facts with which he is concerned. Thus, the two steps in this retrieval process which call for a significant exercise of legal judgment are: (1) the analysis of a factual situation before a search question is framed and (2) the analysis of the body of law which the system makes available. Both of these analyses are performed by the user.

As automated systems of retrieval become more complex, they depart more radically from the West "model" of retrieval. One of the most frequently voiced complaints against the West System is that hierarchical indexing and digesting systems lack the flexibility to adjust to changing concepts in the law. Very often, a change of a major topic will require the wholesale reorganization of subtopics, not only within the major topic, but within the material left under the old topic as well. Moreover, the fact that each new decision must be made to fit a predetermined pigeonhole requires the digester to leave out those portions of the case for which no pigeonholes exist, or

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16 In this process there are two steps in which the machine definitely cannot replace the trained attorney. The first is getting the facts and characterizing the problem; the second is applying the law to the particular question. The computer is merely a middle step. In other words, the attorney gets his facts, characterizes his problem, and then the computer does a search for material on this aspect of the law.

Morgan, supra note 7, at 47.

17 Needless to say, the information acquired by the researcher through the computer will be in raw form. Effective advocacy will still require that the materials be evaluated, organized and persuasively stated. The need for professional skills will not be eliminated.


18 A good example which illustrates this problem is the Decennial Digest, which is keyed to the National Reporter System. In the Fifth Decennial Digest (covering the years 1937 thru [sic] 1946) all social security cases are digested under Key Number 78.2 of the topic "Master and Servant," where they occupy about 190 pages. However, in the Sixth Decennial Digest (covering the years 1947 thru [sic] 1956) "Social Security" became a major topic. It now occupies a single 1,800 page volume entitled "Social Security and the Public Welfare" and has an entirely new organization of Key Numbers. As long as the research is confined to one ten year period covered by the particular Decennial Digest, little difficulty is encountered; but when a prior or subsequent period is to be reviewed, the problem arises.

squeeze them into the nearest preconceived mold—no matter how bad the fit.\textsuperscript{19} Therefore, one of the most frequent departures from the West System has been a rejection of the standard hierarchical index.

The mechanics of computerized retrieval of case or statutory law are especially suited to storage and retrieval of "indexless" bodies of legal literature. If the user-searcher can select a word which either represents or is integrally involved in the concept for which he is searching (either through his own skill or knowledge or through the use of indices or thesauri), the computer can search for that word in its "data bank" and identify or reproduce the document in which it appears. This is fundamentally the type of system which is employed by Automated Law Searching, Inc., (A.L.S.) a division of Aspen Systems Corporation.

A.L.S. has on tape, at the present time, the complete text\textsuperscript{20} of the statutes of nine states, the text of the United States Code, the Internal Revenue Code and Regulations, all Pennsylvania Supreme and Superior Court cases since 1960,\textsuperscript{21} and all Third Circuit and United States Supreme Court cases since 1950.\textsuperscript{22} Because this is a "full text" system, there is no indexing to require the exercise of legal judgment prior to storage.\textsuperscript{23} The auxiliary research tools are a "thesaurus" and a "Key-Word-in-Context" (KWIC) index. These are prepared by the computer's analysis of a stored data base before any search of the material is undertaken. A thesaurus is merely a list of all the words

\textsuperscript{19} See Wilson, Computer Retrieval of Case Law, 16 Sw. L.J. 409, 411-12 (1962). Occasionally, however, the digesters will come up with a new category. See 28 U.S.C.A. § 1651, note 281, at 153 (1966).


\textsuperscript{21} For each Pennsylvania Supreme or Superior Court case prior to 1960, A.L.S. has on tape the full text of the précis that is published immediately preceding the case in the official state report.


\textsuperscript{23} In this respect, the A.L.S. system differs from the West or Morgan approach. "The process of putting the full text in machine-readable form is almost purely mechanical to the extent that no human judgment enters into the transition process." Kayton, supra, note 18, at 15. See also Dickerson, The Electronic Searching of Law, 47 A.B.A.J. 902, 903 (1961).
in the data base showing how many times they appear and in how many subdivisions of the material they appear. By determining the frequency of a word’s appearance, the searcher can roughly determine the amount of material the computer will retrieve with the single word as a “program” or command. If there are several words which identify the concept, the searcher can increase or decrease the number of documents or references the machine will return by linking these words with “operators.” These are connectives roughly corresponding to the linking characteristics of “and,” “or,” “appearing together,” etc. By making the terms he has chosen conjunctive or disjunctive, the searcher can make the mesh of his word “net” finer or coarser in order to increase or decrease the “catch” of references which he can obtain from the machine. The KWIC index is an alphabetical list of significant words in the data base. Along with each word, the machine reproduces the words in the text immediately preceding and following the “key” word so that the searcher can examine the context in which any significant search word might appear. The KWIC index is sometimes used to frame other searches, but is more often used to get the searcher from the search output to a reference book.

Two characteristics of the A.L.S. system should be noted. In the first place, legal skill in selecting the appropriate words and making them into a research “question” by the use of “operators” is wholly that of the searcher. Thesauri (word frequency) and KWIC indices are largely the mechanical product of the machine operation. The only significant operation involving the legal skill of the A.L.S. staff members takes place when searchers are taught the mechanics of question-framing and program construction. After new users receive basic instruction in the mechanics of the operation, they themselves “frame” the questions; however, before they are “programmed” into the computer, an A.L.S. staff member “reviews” the questions framed by the user, and criticizes and corrects them if necessary in light of the legal context in which the question is asked. After several tries, the user usually becomes adept at constructing his questions and the intervention of A.L.S. staff members is no longer necessary. The second major characteristic of A.L.S. is that its “product” is only the complete “raw” text of statutes and/or cases (or, in the alternative, ...

25 See Eldridge & Dennis, supra note 8, at 87-89 (1963). “Searches are accomplished by the researcher himself.” Id. at 87.
While the user structures his question in terms of Key Words and connectives, there is no need for him to be familiar with the technical aspects of computer language. “The person requesting a computer search has the responsibility of selecting the words to be used in the search and arranging them in groups likely to produce the potentially relevant statutes. The personnel of the Health Law Center will arrange the searches in the format required for the computer.” University of Pittsburgh Health Law Center [now A.L.S.], Searches of Law by Computer 15 (undated pamphlet).
26 Interview with A.L.S. staff member at the University of Pittsburgh, August 10, 1967.
There is no digesting or analysis performed by the staff members for the user; he receives merely the machine "printout" with marginal annotations indicating the appearance of the specified "key word." 28

The time and expense involved in putting full "raw" text on tape 29 has led to experimentation with systems which store less than the full text of cases or statutes. Some systems store only the words of a case or statute which have been "translated" into a highly stylized kind of language which is particularly valuable in programming a machine for retrieval. 30 Although they offer great flexibility in research techniques, such systems involving stylized or statistically determined data bases are still experimental and not presently used by any commercial research center.

One commercial service which is based on less than a full text data base is Law Research Service, Inc. (L.R.S.) which has its headquarters in New York City. 31 From the user's point of view, the L.R.S. service begins with a computer thesaurus—a loose-leaf binder which contains an alphabetical list of words and phrases called "descriptors." Each descriptor heading may be further alphabetically subdivided among categorical subheadings, each descriptor entry having its own ten-digit code number. 32 From the thesaurus the searcher

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27 For the case materials for which A.L.S. has only précis on tape, see note 21 supra, the full text product consists of the printouts of these summaries. The summaries are those printed in the official report and are not written by A.L.S. staff members. Id.

28 See Eldridge & Dennis, supra, note 25, at 88.

[In the A.L.S. system], the machine is not intended to make the final selection but only to produce a manageable fund of promising materials (all that are responsive to the specific question), from which the searcher makes the final selection . . . .

. . . [T]he machine is designed not to replace legal judgments but to reduce the kind of mechanical drudgery that lawyers need to avoid if they are to serve their clients adequately. Rather than eliminating the necessity of thinking through the basic legal problem, it highlights the need for careful analysis, not only in framing the inquiry, but in evaluating the results.

Dickerson, supra note 23, at 904 (speaking of a retrieval demonstration by John Horty, A.L.S. founder, at the eighty-third annual meeting of the A.B.A.).

29 This process has recently been made less expensive and time-consuming by the introduction of photo-sensitive electronic "readers" which are capable of "reading" special typeface and transmitting the resulting electronic impulses directly into the computer. Technological advances such as this, which have been readily assimilated into the field of computerized retrieval of legal materials, hold great promises for the future of these services.

30 Such a system has been developed at the Western Reserve University Center for Documentation and Communication. See Melton & Bensing, Searching Legal Literature Electronically: Results of a Test Program, 45 MINN. L. REV. 229 (1960); Melton, The "Semantic Coded Abstract" Approach, 62 M. U.L.L. 48 (1962).

31 L.R.S. "has over one million abstracts of cases stored in its magnetic tape library, including all the New York cases officially reported since 1846 and all officially reported federal cases." Harris, supra note 5, at 293.

selects those entries which most closely characterize his problem; the code numbers for those entries are fed into a Western Union teletype connection with the L.R.S. computer.33 Within minutes the computer will respond with citations of cases in any jurisdiction specified, which are relayed to the requesting party via the teletype system.

Very little is actually known about the technical side of L.R.S. operations, or how their computer programs are prepared.34 It would seem, however, that it resembles the Morgan system35 with its elaborate prior indexing rather than the A.L.S. system, which is based upon the occurrence of significant words in the actual text of the legal materials cited.36 Because of the rapid feedback from the L.R.S. computer, it would appear that there is no intervention by staff members between the searcher and the computer system. The searcher characterizes and analyzes his problem, finds the significant entries in the thesaurus, and has direct access to the computer data bank much in the same way as the manual researcher has direct access to case law through the traditional West system.37 For the user who does not have access to the system's thesauri, L.R.S. offers a “Special Evaluation Query” service. The L.R.S. subscriber who uses this service transmits by mail a form which will enable L.R.S. staff members to make for him the proper selection from the thesauri. Each form (marked at the top: “for The Profession only”) provides space for the subscriber to ask a specific question which he wishes to research as well as a statement of the factual context of the problem.38 Within twenty-four hours, the subscriber receives case citations which the computer has indicated are on point with the problem he has described. This “Evaluation”

33 A subscriber may have a teletypewriter in his own office or he may communicate by telephone with an “area director” who has direct Western Union teletype communication with L.R.S.'s computer. L.R.S. has 150 branch representatives in 39 states. Levison, Automated Legal Research at the University of Florida College of Law: Development of a New Service for Florida Lawyers, 41 FLA. BAR J., February, 1967, at 80.

34 Exactly how cases are gathered, analyzed, processed and stored is regarded as a “trade secret.” Telephone conversation with L.R.S. staff member, August 16, 1967.

An L.R.S. advertisement merely states that the service has “gathered and indexed” state and federal cases. Law Research Service, Inc., Legal Research by Computer (undated brochure).

35 See notes 11-13 supra and accompanying text.

36 See notes 20-24 supra and accompanying text. The A.L.S. [Pittsburgh] system would seem to hold greater promise for dealing with the increasing volume of legal literature in that its new approach does away with the handicaps attendant on a hierarchical indexing system. See note 18 supra. Because the A.L.S. system does away with the need for pre-digesting and indexing, it eliminates from research the need for judgment on the part of the classifier of the significance of the case he will store in the system.

37 The L.R.S. system presupposes that the user has access to a set of West (or official state) reporters since its principal product is a list of citations. Full text “printouts” are available, but these are supplied by L.R.S. staff members who find the computer-dictated citations themselves and merely type out the text of the case. Interview with L.R.S. staff member, November 16, 1967. But see note 39 infra.

38 “[W]e ask that you include essential background material in the factual statement... This will enable us to tailor our answer factually, as well as legally, to your particular problem.” Law Research Service, Inc., Your Special Evaluation Query Service (undated instruction pamphlet).
service does differ from the direct access service in that some analysis on the part of L.R.S. staff members is called for after the subscriber transmits his problem to the service and before he receives a reply.49

Rapid technological advances in the computer sciences indicate that the techniques of legal retrieval discussed above are still in a stage of experimentation and development.40 Because the products of these services and the techniques by which they are produced are variable quantities, any attempt at an exposition of their professional status in the legal community must be tentative at best. However, the fact that their procedures are sufficiently stable to form a basis for commercial operation justifies some exploration of their impact on the practice of law. At the same time, it should be acknowledged that the governing order of the legal profession—the law of unauthorized practice and legal ethics—is not subject to easy analysis and is presently undergoing a significant reorientation.41

39 It would seem that the L.R.S. staff does have a role in servicing special evaluation queries. Referring to an "unnamed" computer service which was the subject of a news story in the December 3, 1963, issue of the New York Times, one commentator observed that "these results are then reviewed by the company's legal staff, and the four most relevant decisions among those cited are produced in full by the printer. This, together with a list of all the other citations the computer has printed out, is then sent to the lawyer who made the inquiry." Landes, Project: Automated Legal Research, 52 A.B.A.J. 730, 732 (1966). The New York Times article, which deals only with L.R.S., notes that "the relevant cases were then checked by staff experts for a history of case law and a determination of their status." New York Times, Dec. 3, 1963, at 45, col. 2. The same article also noted that "[a spokesman] emphasized, however, that the service was just a mechanical function. 'Neither we nor the machines,' he said, 'attempt to analyze the processed data.' " Id. at 73, col. 1. Some of the statements in the article may be inconsistent with the present operation of the system. See text accompanying notes 31-38 supra.

40 In regard to the L.R.S.'s "product," one source noted that a requesting attorney receives a memorandum which contains

(1) the full text printout of several of the most relevant cases; (2) citations of additional applicable cases, statutes and other authorities; (3) a discussion and analysis of the facts contained in the attorney's question; and (4) a discussion of the applicable law.

Note, Jurimetrics: The Electronic Digital Computer and Its Application in Legal Research, 50 Iowa L. Rev. 1114, 1131 (1965). An L.R.S. staff member, however, asserted that only citations and text printouts constituted the service's product. Interview with L.R.S. staff member, November 16, 1967.

It would seem inaccurate to characterize this "Special Evaluation Query" as a purely legal analysis although it does seem to bear a resemblance to the unlicensed law clerk who is requested to find the law dealing with a particular factual situation. The "Special Evaluation Query" form does call for an analysis of the facts and issues involved by the subscriber attorney before submission of the question. The instruction pamphlet also cautions: "We cannot and would not presume to render or substitute our opinions for your trained analysis." Law Research Service, Inc., Your Special Evaluation Query Service (undated instruction pamphlet).


41 See text accompanying notes 29-30 supra. Such innovations may enable these systems to reach a long sought-after goal, which is to "be able eventually to set up a system that is simple enough to need no middle man between search requests and computer." Covey, Information Retrieval in Law: Problems and Progress with Legal Computers, 67 Dick. L. Rev. 353, 356 (1963).

Unauthorized Practice of Law

Historically, the law of unauthorized practice grew out of judicial power to regulate practice at the bar. In the fourteenth and fifteenth centuries, attorneys were recognized as officers of the courts, under the supervision of the judges. A natural corollary of the power to regulate admission to the bar was the power to prevent laymen from practicing law, enforced through the contempt power of the courts.

Traditional analysis posed two questions: does the activity in question constitute the “practice of law”?—if so, is it “authorized”? 

The Practice of Law

Attempting to define the “practice of law” is no easy task. Some jurisdictions have no legislation dealing with unauthorized practice, and instead rely on a judicially articulated doctrine. Some states attempt to list those functions which may be considered “practice”; usually, these specify such activities as representing another before a court, drawing up legal papers and so forth. At the other extreme, some statutes merely prohibit unauthorized practice without attempting any definition of practice. Still other statutes are framed in general terms; these may provide that “render[ing] any legal service for any other person . . . shall be deemed to be practicing within the meaning of this section.”

Such broad language encourages equally broad judicial interpretation. One court, in considering whether a town clerk, in verifying titles to land, was engaged in the unauthorized practice of law, remarked:

Attempts to define the practice of law have not been particularly successful. The reason for this is the broad field
covered. The more practical approach is to consider each state of facts and determine whether it falls within the fair intendment of the term.\textsuperscript{40}

Setting forth to find the "fair intendment of the term," courts have traditionally found that certain actions usually involve "practice." Thus, drawing up instruments which set forth or alter legal rights,\textsuperscript{59} such as a will,\textsuperscript{51} handling uncontested probate matters,\textsuperscript{52} or appearing in court on behalf of another\textsuperscript{53} are generally considered to be practice of law. None of these services, however, are offered by the commercial retrieval agencies considered above.

There is considerable evidence that another category, the giving of legal advice to clients in the context of a particular factual situation, also constitutes the practice of law.\textsuperscript{54} One court has defined the practice of law as including "advice to clients"\textsuperscript{55} and other courts have said that, while filling in the blanks on a legal form may be a mere clerical act, yet, where the instrument is shaped from facts and circumstances requiring a knowledge of the law,\textsuperscript{56} or where the scrivener elicits the proper information, considers it and acts thereon,\textsuperscript{57} he is practicing law.


Our legislature has never undertaken to define the practice of law. Though this court has made findings in specific cases holding that certain acts did or did not constitute the practice of law, unfortunately the decisions cannot be reconciled with each other; do not reflect a definite guide or policy and afford slight assistance in resolving the issues before us. Id. at 411, 312 P.2d at 1005.

\textsuperscript{50} See, e.g., Conway-Bogue Realty Inv. Co. v. Denver Bar Ass'n, 135 Colo. 398, 312 P.2d 998 (1957). Even though the court denominated as "practice" the drawing up of the conveyances, it declined to enjoin this activity, finding it not contrary to public policy.

\textsuperscript{51} A deputy surrogate and a title clerk were held in contempt of court for drawing up a will in In re Baker, 8 N.J. 321, 85 A.2d 505 (1951).

\textsuperscript{52} A law clerk was held to be practicing law when he handled an uncontested probate case in Ferris v. Snivley, 172 Wash. 167, 19 P.2d 942 (1933).

\textsuperscript{53} In Clements v. State, 141 Tex. Crim. 108, 147 S.W.2d 483 (1941), a law clerk was fined for representing a client in a divorce proceeding. An exception to this general rule has recently been made to permit some law students to appear in court on behalf of the indigent. See In re Cornell Legal Aid Clinic, 26 App. Div. 2d 790, 273 N.Y.S. 2d 444 (1966); Cleary, Law Students in Criminal Law Practice, 16 DePAUL L. REV. 1 (1966); McArdle, Law Students' Participation in National Defender Projects, 24 LEGAL AID BRIEFCASE 262 (1966).

\textsuperscript{54} This definition would not seem to cover the case of abstract legal advice. Even on such occasions, however, some factual context is implicit: when a layman asks an unlicensed law clerk about the law concerning the duty to erect fences around open elevator shafts, implicit in the question is in all probability that the interrogator has such an elevator shaft about which he is concerned. See note 52 infra. See also State ex rel. Florida Bar v. Sperry, 140 So. 2d 587, 591-92 (Fla. 1962), rev'd on other grounds, 373 U.S. 379 (1963) (advice must affect important legal rights where protection of those rights requires knowledge of law greater than that possessed by average citizen).

\textsuperscript{55} In re Duncan, 83 S.C. 186, 189, 65 S.E. 210, 211 (1909).

\textsuperscript{56} See In re Matthews, 57 Idaho 75, 82, 62 P.2d 578, 581 (1936).

\textsuperscript{57} See People ex rel. Ill. Bar Ass'n v. Schafer, 404 Ill. 45, 54, 87 N.E. 2d 773, 777 (1949).
If the giving of legal advice in a specific factual context is the "practice of law," one must consider the function exemplified by the unlicensed law clerk. He rarely does research in a vacuum, looking for law in the abstract. His search is usually framed and delimited by a particular factual situation and the research memorandum which he writes will apply the law as he finds it to those facts. This activity, however, does not constitute the practice of law when the memorandum is submitted to a licensed attorney who reviews the matter with his own skill and experience, and passes the legal advice on to the client.58 If, however, the clerk were to pass his memorandum directly on to the client, he would be engaged in the practice of law.59 The significant element distinguishing these two cases is the person for whom the activity is done, that is, whether or not he is the proper object or recipient of the advice given. Traditional analysis of the "practice of law" has, as was indicated, usually emphasized the product—the service rendered in each case.60 This is to be expected, since consideration of the service to be given is a sine qua non of the law of unauthorized practice. It is suggested, however, that the analysis advanced here—in terms of the person for whom the service is rendered—is also a significant element in the law of unauthorized practice.

Analysis in terms of the recipient of the service is to some degree implicit in the recorded lore of unauthorized practice. The Annual Report of the American Bar Association for 1927 included in the definition of the practice of law "counsel . . . rendered in respect of the rights, duties, obligations, liabilities or business relations of the one requesting the service."61 One judge has offered this observation:

58 [The functions of an unlicensed law clerk] should be limited to work of a preparatory nature, such as research, investigation of details, the assemblage of data and other necessary information, and such other work as will assist the employing attorney in carrying the matter to a completed product, either by his personal examination and approval thereof or by additional effort on his part.

Ferris v. Snively, 172 Wash. 167, 176-77, 19 P.2d 942, 945-46 (1933). The court recognized that the nature of the work performed by a law clerk approached that of his employer, and that a "line of demarcation as to where their work begins and where it ends cannot always be drawn with absolute distinction or accuracy." Id. at 176, 19 P.2d at 945. See also Crawford v. State Bar of California, 54 Cal.2d 490, 355 P.2d 490, 7 Cal. Rptr. 746 (1960) (engaging in partnership with disbarred attorney who performs functions greater than those of law clerk violates legal ethics).

59 If a lawyer requested his law clerk to draw up a memorandum of law which would affect or clarify the lawyer's own personal legal rights (e.g., assisting the lawyer in purchasing a house), the clerk would not be practicing law since the attorney would in this case be acting as his own "filter."

60 Traditional analysis has taken this form largely because each case turns on the particular factual situation involved. See People ex rel. Ill. State Bar Ass'n v. Schafer, 404 Ill. 45, 53, 87 N.E.2d 773, 777 (1949). There are some dicta that other considerations are not relevant, see State ex rel. Johnson v. Child, 139 Neb. 91, 94, 295 N.W. 381, 383 (1941). Such comment has largely been directed, however, to the contention that the tribunal before which the acts are performed was determinative, i.e., that judicial power to regulate practice did not extend to state administrative agencies.

61 Quoted in Ferris v. Snively, 172 Wash. 167, 175, 19 P.2d 942, 945 (1933) (emphasis added).
This is the essential of legal practice—the representation and the advising of a particular person in a particular situation. The lectures of a law school professor are not legal practice for the very reason that the principles enunciated or the procedures advised do not refer to any activity in immediate contemplation though they are intended and conceived to direct the activities of the students in situations which may arise.

One particular value of the analysis in terms of recipient is that it explains the position of the law clerk and, at the same time, points up the truly significant factor in those cases which speak in terms of product; that is, it indicates that what characterizes the process as the practice of law is that the immediate recipient of the advice or counsel will have his legal rights altered, clarified, explained or affected in some manner thereby. Thus, as indicated above, it is not the practice of law for a law professor to convey certain information to his class, while it would constitute legal practice were an unlicensed professor to convey information to a layman in a context which would indicate that the information would alter or define the latter's rights.

A.B.A. Guidelines

The last annual report of the American Bar Association Standing Committee on Unauthorized Practice stated that further study of computerized retrieval was taking place. However, in the way of preliminary observations it noted that a retrieval system

is unobjectionable so long as it is merely a means of storing textual information for later retrieval. In that respect, it is similar to a library. So long as it is a library, there would appear to be no unauthorized practice of law problems present. When, however, the system becomes so sophisticated

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62 New York County Lawyers' Ass'n v. Dacey, 28 App. Div. 2d 161, 283 N.Y.S.2d 984, 998 (1967) (Stevens, J., dissenting). The New York Court of Appeals reversed the Appellate Division, adopting by a vote of 6 to 1 Justice Stevens' dissenting opinion finding that the publication of Norman F. Dacey's book, How to Avoid Probate, did not constitute the practice of law. New York County Lawyers' Ass'n v. Dacey, 21 N.Y.2d 694, 287 N.Y.S.2d 422 (1967). Factually, the Dacey case does not offer a good analogy to computerized retrieval. Dacey was engaged in the distribution of information of a general nature, which was not in response to any particular factual situation or request.

This distinction was also drawn in Shortz v. Yetter, 38 Pa. D.&C. 291 (Luzerne County C.P. 1940), in which the defendant had published a pamphlet giving legal information which contained an offer to answer specific questions which might be submitted by readers. The court modified a decree enjoining the publication of the pamphlet to allow publication without the offer to give specific legal advice, but continued to enjoin publication of “questions and answers involving expert or professional knowledge...” Id. at 300. Cf. Grievance Comm. v. Dacey, 154 Conn. 129, 222 A.2d 339 (1966).

that facts are fed into it from which the system draws legal conclusions based on specific legal analysis, it would involve the practice of law. On well established principles, these services may be rendered only to lawyers, for as soon as the spectrum of services becomes broader, so that the services are rendered to non-lawyers, it impinges upon the unauthorized practice of law.\(^4\)

This statement illustrates that an analysis in terms of the user of a retrieval system (the recipient of legal information) is particularly applicable to the field of computerized retrieval. However, further analysis in terms of the services presently offered and the preceding discussion of the practice of law suggests that the A.B.A. position may be both unnecessarily restrictive and, at the same time, unrealistic.

The thrust of the A.B.A. Committee statement is that if the system draws legal conclusions based on specific legal analysis, it is practicing law and must restrict its product to lawyers. Lawyers, in other words, are proper users of such a system, while laymen are not. The statement recognizes that the issue of unauthorized practice arises only when a system provides some kind of legal analysis. As was mentioned earlier, the A.L.S. (Pittsburgh) system makes the law directly available to the searcher without the intervention of any intermediary, whether indexer or analyst. The user is responsible for analyzing his own problem and for selecting words which he believes are significant in characterizing that problem. His selection of words and the way in which he combines them with operators is the form in which the query is “programmed” into the computer. Full “raw” text is the product which is directly dispatched to the searcher without interposition by staff members. It has been suggested above that legal advice which affects or defines legal rights\(^6\) or is based on the analysis of a particular fact situation may well constitute the practice of law.\(^6\) Here, since there is no legal analysis by the system, it is not engaged in the practice of law, and laymen as well as lawyers should be considered proper users.

The same reasoning applies to the L.R.S. (New York) standard system of retrieval, in which the searcher is responsible for analyzing his

\(^4\) American Bar Ass’n Standing Comm. on Unauthorized Practice of Law, Annual Report, 33 Unauthorized Practice News 62, 70 (No. 1-2, 1967). These standards have recently been explained and clarified in Lorinczi, When Does the Computer Engage in Unauthorized Practice?, 54 A.B.A.J. 379 (1968). The latest draft of the A.B.A. standards distinguishes “raw or library type” legal data retrieval services from services which are “advisory or analytical,” but continues to discuss availability in terms of a “lawyer-layman” dichotomy. Id. at 380-81. The proposed standards call for disclosure by commercial services of their general operational procedures; on the basis of these disclosures, the A.B.A. will issue a “certificate of compliance” indicating which type of service is being offered. Id. at 380.

\(^6\) See State ex rel. Florida Bar v. Sperry, 140 So.2d 587, 591 (Fla. 1962), rev’d on other grounds, 373 U.S. 379 (1963); notes 56-57 supra and accompanying text.

\(^6\) See notes 58-59 supra and accompanying text.
own problem and choosing, from the computer thesauri, descriptors which adequately characterize it. From that point on, the searcher is in direct contact with the body of stored law via Western Union. He receives back from the computer a typed list of citations which he, like the A.L.S. subscriber, must analyze and apply to his problem. Because there is no legal analysis performed by the system, it must be concluded that, here also, laymen as well as lawyers should be given full access: the procedure involved is analogous to that used in manual research.\textsuperscript{67}

If a system were "so sophisticated that [from] facts fed into it . . . the system draws legal conclusions,"\textsuperscript{68} the A.B.A. report recommended that its use be restricted to lawyers. Since no computer has yet been programmed to draw a legal conclusion, the report, in referring to the "system," is presumably referring to staff members whose functions constitute part of the service rendered.

In the A.L.S. system, the burden of choosing appropriate words for a search and constructing them into a search question lies wholly upon the user-searcher. A staff member is called upon to exercise any form of legal judgment only when introducing a new subscriber to the service. The questions formed by the user may be criticized and altered;\textsuperscript{69} but even if it is assumed that the procedure amounts to a significant exercise of legal judgment by the staff member, any problem can easily be eliminated by instructing new users in terms of hypothetical rather than actual fact situations.

The L.R.S. system of operation, which permits the searcher to be in direct contact with the computer via teletype, presumably involves no post-indexing legal skill on the part of staff members.\textsuperscript{70} Less certain, however, is the status of the L.R.S. "Special Evaluation Query."\textsuperscript{71} This service calls for a statement of the factual background of the searcher's problem. The subscriber, however, is responsible for the initial analysis of the problem and must submit a question which accurately frames the legal issues involved.\textsuperscript{72} The factual statement may assist the staff member to select the appropriate descriptor num-


One possible qualification may, however, be appropriate. These services, if they offer their product to laymen, should not allow the inference to be drawn through advertising that the product will offer a legal solution to a particular problem. A disclaimer may be appropriate here. Cf. American Bar Association, \textit{Statements of Principles with Respect to the Practice of Law} 8 (Sept. 1, 1964).

\textsuperscript{68} American Bar Ass'n Standing Comm. on Unauthorized Practice of Law, Annual Report, 33 \textit{Unauthorized Practice News} 62, 70 (No. 1-2, 1967).

\textsuperscript{69} See note 26 \textit{supra} and accompanying text.

\textsuperscript{70} But see note 39 \textit{supra}.

\textsuperscript{71} See text accompanying notes 38-39 \textit{supra}.

\textsuperscript{72} The question form clearly indicates that the searcher is responsible for an initial analysis of the factual context of the problem. A legal analysis is called for, since only legally significant facts are entered on the form. See note 39 \textit{supra}.
bers and evaluate the relevance of the cases produced, but the primary “legal” analysis is clearly done by the subscriber. More significant is the fact that the service does not attempt to convey any legal analysis to the user. The product of the “Special Evaluation Query” is the same as that made available through direct teletype access to the L.R.S. computer: case citations and, possibly, full text print-outs of the cases cited. A lawyer-subscriber must perform his own “legal” analysis of the resulting information. Therefore, application of the law to a particular factual situation is not present in the L.R.S. product.

When a lawyer uses this research aid, it is clear that even if some increment of legal analysis remained in the system, this analysis would not be given to the “one requesting the service.” It was suggested earlier that when an unlicensed law clerk prepared a memorandum for a client, it would constitute practice, while the same memorandum prepared for a lawyer-employer would not. What distinguishes the two cases is that the advice given to the attorney does not concern his own personal affairs or affect his rights or liabilities, while the advice given to his client is intimately concerned with his affairs. In this situation, the computer analysis would play a role equivalent to that of an unlicensed law clerk. The essential element of authorized legal advice is preserved here: ultimate judgment comes from a licensed attorney directly to his client on the basis of a professional relationship which meets the requirements of the Canons of Professional Ethics. In other words, when asking “For whom is the service being rendered?” one should also ask “How will the advice affect the user?”

This analysis in terms of the user, since it is not bound by the simple dichotomy of the A.B.A. report (lawyer, non-lawyer), suggests a wider access to the computer’s analytical services. There are laymen who have very good reasons for wishing to have access to the law. A partial list would include penologists, sociologists, economists, political scientists, law librarians, law students, and legislative researchers. This class of users is usually characterized by an academic

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73 But see note 39 supra.
74 See text accompanying note 61 supra.
75 See text accompanying note 58 supra.
76 See text accompanying notes 102-05 infra.
77 See text accompanying notes 60-63 supra.

Not considered here is the case of the layman who is interested in the passage or repeal of legislation (whether as citizen or lobbyist) and who would like to know whether a particular hypothetical situation is covered by existing law. Even though he is not affiliated with any academic institution, his purpose is so akin to that of the legislative researcher or the academic that he could lay claim to the academic exception. Policing such users to ensure that their claim of purely hypothetical interest was valid might well be impossible; this would suggest that such non-affiliated laymen should be denied access to analytical system despite their academic interest. See text accompanying note 80 infra. An argument could be made, however, that the first amendment protects the citizen’s right to be informed about matters of political interest. It would seem that such an argument could prevail only if neither manual research tools nor non-analytic, “raw-text” computer services were available.
affiliation or purpose.\textsuperscript{79} If a system in which some element of legal judgment is present is made available to laymen who are members of a group characterized by some kind of academic affiliation for the purposes of carrying out research, then it is also true that the one requesting the service will not have his legal rights or duties explained, altered or commented upon. Giving them access to computerized retrieval facilities even in those cases where some increment of legal judgment may be called for will not only insure that these individuals will be able to draw upon the law, but also may spare them some of the time and expense of legal research which can be a great burden on any legally-related research project.\textsuperscript{80} For the kind of service exemplified by the L.R.S. "Special Evaluation Query" therefore, academicians as well as lawyers should be considered proper users.

The kind of service typified by a mixed law-fact or straight fact query, however, should be restricted to the lawyer-academician class of user. Even if the "product" contains no explanation or analysis of the law, but merely case citations, the fact that the system provides the layman with a selection of sources from a large data-bank would probably be grounds for an inference that this information supplies the "answer" to his problem. Even if the system offers adequate disclaimers the probability is great that the layman would nonetheless regard the information as dispositive. If a system in which there is a small residue of legal judgment cannot in substance be denominated the practice of law, the fact that laymen might treat it as such, in conjunction with the earlier "user" analysis, should be sufficient grounds for excluding laymen from its class of proper users.

The above discussion does not, however, exhaust all relevant considerations. The assumption of the A.B.A. report that "detailed legal analysis" would constitute "practice" raises additional problems in terms of "authorization."

\textit{Authorization}

In the early development of case law, the authorization test was quite simple—attorneys at the bar were authorized by the courts and

\textsuperscript{79}[M]any economists have become recognized experts on the anti-trust laws and numerous political scientists have studied legislative reapportionment and redistricting. In a somewhat different manner, social scientists want to know about the law in action in order to study the judicial process. Their research efforts using reported decisions are very important scholarly activities. Freed, \textit{Computer Law Searching: Problems for the Layman}, \textit{DATAMATION}, Oct., 1967, at 41.

\textsuperscript{80}It is of course possible that an academic user may use an analytical system to obtain legal information which may be of some personal value—\textit{i.e.}, to explain or clarify his personal rights or liabilities. Access for academic users could be conditioned upon their signing a statement, incorporated on standard subscriber forms, to the effect that the information requested is not of such a kind as will be of personal use to the subscriber. In any event, to the extent that the purpose of the limitations on the practice of law is to protect the untutored layman from incompetent legal service, it would seem that the academic user is far less in need of this protection: he of all persons should be aware of the dangers of unskilled legal advice.
laymen were not. In time, however, even this simple distinction was modified. Some courts held that minor services (such as filling out a simple deed or lease) could be performed by laymen if such services were “incidental” to the ordinary operation of their business (as it would be in the case of real estate agents). In such cases the benefit to the public in allowing these activities by laymen was thought to outweigh the public benefit in restricting the practice of law. The “incidental” test, however, is clearly inapplicable to the commercial services discussed above, since the services are part and parcel of one principal product.

The lawyer-layman distinction does not exhaust the relevant possibilities in this field. Both of the services described above are corporations; corporations, according to the traditional rule, cannot practice law. In some states, the interdiction against corporate practice is a result of specific legislative enactment. In the absence of any specific legislation on the matter, courts have held, on the basis of common law precedent, that corporations may not practice.

Although this theory has been invoked to permit some forms of corporate practice, it would not be applicable to retrieval services since

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81 See, e.g., Conway-Bogue Realty Inv. Co. v. Denver Bar Ass'n, 135 Colo. 398, 415-16, 312 P.2d 998, 1007 (1957) (such “incidental” work could be done at the request of customers in connection with transactions already being handled, and without separate charge). But see Gardner v. Conway, 234 Minn. 468, 48 N.W.2d 788 (1951) (accountant employed to prepare tax returns cannot deal with “difficult or doubtful questions” concerning the interpretation of tax statute).

82 See, e.g., Opinion of the Justices, 289 Mass. 607, 194 N.E. 313 (1935); Boykin v. Hopkins, 174 Ga. 311, 162 S.E. 796 (1932). This should be distinguished from the legitimate functions of house counsel, who serve the legal interests of the corporation only.


84 See, e.g., In re Co-operative Law Co., 198 N.Y. 479, 92 N.E. 15 (1910) (decided before passage of a statute which expressly prohibited corporate practice).

85 See, e.g., Clark v. Austin, 340 Mo. 467, 478, 101 S.W.2d 977, 982 (1937); Opinion of the Justices, 289 Mass. 607, 613, 194 N.E. 313, 316-17 (1935).

86 These prerequisites are usually specified as good character and the taking of the oath of admission. See Boykin v. Hopkins, 174 Ga. 311, 321, 162 S.E. 796, 800 (1932); Opinion of the Justices, 289 Mass. 607, 194 N.E. 313 (1935). This formalistic reasoning has been criticized for lacking in articulated policy what it possesses in internal logical consistency. See Lewis, Corporate Capacity to Practice Law—A Study in Legal Fictions, 2 Mo. L. Rev. 342 (1938). The rationale behind this prohibition is in accord with that advanced by the Canons of Ethics. See note 105 infra and accompanying text.

87 See text accompanying note 81 supra.

88 See Bar Ass'n v. Union Planters Title Guarantee Co., 46 Tenn. App. 100, 326 S.W.2d 767 (1959), which permitted “incidental” practice, even though corporate practice was prohibited by Tenn. Code Ann. § 29-303 (1955). The court held that a real estate corporation was permitted to engage in the “incidental” practices of title searching, drafting of deeds and the preparation of escrow agreements.
their activities discussed above are their main product and not an incidental service.

The second major exception to the prohibition of corporate practice arises from a recent United States Supreme Court decision which vacated a state court's order prohibiting a union from employing attorneys to serve its members. The Court held that the prohibition of the union's practice of law was "not needed to protect the State's high standards of legal ethics." However, the constitutional basis for that decision is completely absent from the commercial setting of retrieval services.

The prohibition against corporate practice has also disappeared in those states which have amended the rule and the corresponding Canons to permit attorneys, subject to stipulations, to incorporate what were formerly their partnerships. To date, however, none of the commercial retrieval agencies are located in those states in which such an exception has been made. However, even if they were, the nature of the stipulations makes it clear that they contemplate incorporation of a traditional law firm and that the retrieval services, in their present form, could not comply with them.

The statement of the A.B.A. Committee on Unauthorized Practice, mentioned earlier, noted that when a "system becomes so sophisticated that facts are fed into it from which the system draws legal conclusions based on specific legal analysis, it would involve the practice of law." This would seem to imply that a system which integrated specific legal analysis in its product always involves the practice of law. All of the services discussed are presently incorporated and, given the above analysis, if found to be involved in the practice of law would run afoul of the prohibition against corporate practice and would, therefore, be prevented from offering their product to either lawyers or laymen.

This problem is exemplified by a recent New Jersey Ethics decision requested by two attorneys who proposed to form a corporation

81 Id. at 225.
82 A constitutional question might arise, however, if computerized legal services were to be offered to groups otherwise unable to obtain legal services—if, for example, the N.A.A.C.P. were to offer an analytic computer service to indigent Negroes.
83 See ABA Comm. on Professional Ethics, Opinions, No. 303 (1967). These stipulations are generally that

1. The individual lawyer must remain personally responsible to the client, and the client must be advised of the limited liability of the partners.
2. The centralized management must remain exclusively in the hands of lawyers.
3. None of the shareholders in the corporation may be non-lawyers.

84 See In re Florida Bar, 133 So.2d 554 (Fla. 1961). Similar provisions have been adopted in Colorado. See Bye & Young, Law Firm Incorporation in Colorado, 34 Rocky Mt. L. Rev. 427 (1962).
which would offer research and brief-writing services to fellow lawyers.\textsuperscript{55} The articles of incorporation and the by-laws included provisions to keep all such services confidential, and to develop and use all types of information and retrieval services.\textsuperscript{66} The Ethics Committee determined that the proposed activity was improper, holding first that legal research and brief writing—"the very foundation of all law practice"—constitute the practice of law and, second, that New Jersey rules of court prohibit corporate practice.\textsuperscript{97} New Jersey attorneys are specifically forbidden by canon \textsuperscript{88} from aiding or encouraging the unauthorized practice of law, which in this case, would be practice by a corporation.

Two considerations suggest that this opinion leaves much to be desired. First, the analysis of \textit{user} set forth above \textsuperscript{98} suggested that an essential element of the practice of law was the rendering of advice which was designed to clarify or alter the legal rights of the person receiving it.\textsuperscript{100} Because a research product incorporating detailed legal analysis would not be given for the purpose of affecting the attorney-subscriber's rights, the service given to other lawyers should not be denominated practice.\textsuperscript{101} The client who will be the eventual recipient of the legal information is protected; before it is conveyed to him, it will be "filtered" through the judgment and skill of the attorney-subscriber.

Closely associated with the first is a second criticism of the New Jersey Ethics decision: that it does not advance the policy against corporate practice. The often unarticulated rationale behind the prohibition against corporate practice is implicit in Canon 35 of the American Bar Association Canons of Professional Ethics.\textsuperscript{102} This


\textsuperscript{96} Id.

\textsuperscript{97} Id.

\textsuperscript{66} Id. Canon 47 speaks directly to the involvement of lawyers in unauthorized practice:

\textit{No lawyer shall permit his professional services, or his name, to be used in the aid of, or to make possible, the unauthorized practice of law by any lay agency, personal or corporate.}

ABA CANONS OF PROFESSIONAL ETHICS No. 47.

\textsuperscript{69} See notes 61-62 \textit{supra} and accompanying text.

\textsuperscript{100} See note 62 \textit{infra} and accompanying text.

\textsuperscript{101} This service is analogous to that rendered by an unlicensed law clerk. \textit{But see note 106 infra.}

\textsuperscript{102} The official status of the Canons varies from state to state. They are binding on all members of the bar association (Most state bar canons are in pari materia with the ABA Canons; only the latter will be discussed here). In some states with an integrated bar, they are binding on all lawyers by statute, e.g., WASH. REV. CODE ANN. § 2.48.230 (1961), or by rules of court. \textit{See, e.g., Integration of the Bar, 273 Wis. 281, 77 N.W.2d 602 (1956); Integration Rule of the Florida Bar, 40 FLA. BAR J. 538 (1966).} In other states the Canons may be enforced at the option of the court. \textit{See, e.g., In re Heirich, 10 Ill. 2d 357, 386-87, 140 N.E.2d 325, 839-40 (1956), cert. denied, 355 U.S. 805 (1957); Hunter v. Troup, 315 Ill. 293, 302, 146 N.E. 321, 324 (1924).}

However, prosecution for unauthorized practice and for violation of the Canons are two different actions and must be separately brought. Touchy v. Houston Legal
rule dictates that the relationship between lawyer and client should be
direct and personal, and should not admit of the interposition of any
lay agency, whether personal or corporate.\textsuperscript{103} Canon 35 contemplates
the situation in which a trust company introduces its client to one of
its own lawyers, or where a corporate executive seeks legal advice from
house counsel.\textsuperscript{104} The corporation or trust company is spoken of as
"intervening" between the lawyer and his "client." The purpose of
this Canon is to preserve a unity of interests between the lawyer and
his client and to avoid possible conflicts of interest between client and
employer.\textsuperscript{105} There is no reason, however, why this relationship can-
not be maintained when a lawyer-subscriber is employing a commercial
service to do legal research for him. A memorandum of law submitted
to a lawyer should be as subject to his review and approval as a
memorandum prepared by an unlicensed law clerk.\textsuperscript{106} Lawyers should,
therefore, be recognized as proper users of all such systems.

**CONCLUSION**

While the A.B.A. statement implicitly recognizes that lawyers are
proper users, it does not go far enough. It was pointed out above\textsuperscript{107}
that a class of "academic" users are proper users. Any legal advice
given these users does not affect the rights of the person to whom
it is given; moreover, there are no lawyer-client relationships to protect
since this class is more interested in the product as "information" than
as "advice." For those systems which retain some increment of legal
analysis, therefore, the class of users denominated academic should be
considered proper, even though it cuts across the rigid lawyer-layman
lines of the A.B.A. statement.

The statement would clearly deny ordinary laymen seeking legal
advice access to a service embodying some form of legal analysis.

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\textsuperscript{103} ABA CANONS OF PROFESSIONAL ETHICS No. 35 provides:
The professional services of a lawyer should not be controlled or exploited by
any lay agency, personal or corporate, which intervenes between client and
lawyer. A lawyer's responsibilities and qualifications are individual. He
should avoid all relations which direct the performance of his duties by or in
the interest of such intermediary. A lawyer's relation to his client should be
personal, and the responsibility should be direct to the client. . . .

\textsuperscript{104} See Wise, Legal Ethics 87-94 (1966).


\textsuperscript{106} It is noteworthy that the New Jersey Ethics opinion speaks of the proposed
corporation's product as research and brief writing. One element distinguishing this
situation from present computerized research facilities is that briefs could be passed
on directly to a court and serve as substitutes for an attorney's own work. Memoranda
of law, the usual product of legal research, are much less likely to pass through an
attorney's hands without his scrutiny; certainly, mere citations or case printouts can-
not be passed on to court or client without some work on the part of the attorney-
subscriber.

\textsuperscript{107} See text accompanying note 79 supra.
Analysis in terms of the "user" would indicate that this is a correct result since advice given directly to the person requesting it should properly be considered practice. Moreover, the policy underlying the unauthorized practice doctrine suggests that some restriction may be warranted. One of the basic purposes of the unauthorized practice restriction is to secure a professional relationship between lawyer and client, marked by a close personal association and a unity of interests. A client is assured of a certain standard of competence and adherence to a code of ethics when the person giving the legal advice must meet educational and other requirements for admission to the bar and is subject to disciplinary action for infraction of ethical standards. When the product of a retrieval service embodying legal analysis is offered to attorney-subscribers, the lawyer's client is nonetheless protected by these standards, for the lawyer continues to be responsible for the advice he passes on. In the case of academic users, there is no "client" in the sense of one having his rights clarified or altered; information is simply being disseminated. But a computerized retrieval service making services embodying legal advice directly available to the layman would not conform to these standards. A commercial enterprise is particularly unadaptable to this professional setting when it provides a standardized product through impersonal "staff" service and by personnel who are unidentifiable for purposes of licensing and policing adherence to ethical standards. A commercial retrieval system which has these characteristics and which incorporates in its product legal analysis and judgment should, therefore, not be made accessible to the ordinary layman. However, the traditional prohibition against "corporate practice" should not be used to block the availability of such services to lawyers. The rationale of this prohibition requires no such result.

At the present time, it is the policy of both commercial services discussed above to restrict their products to a particular class of users. A.L.S. services only lawyers and legally related users, while L.R.S.

108 Of particular interest to the legal profession at the present time is the prohibition of advertising or solicitation of legal business. See ABA CANONS OF PROFESSIONAL ETHICS No. 27. Both of the services discussed above do carry on extensive advertising, which at present involves no ethical ramifications since, under the analysis above, they are not involved in the practice of law. If a system which incorporated legal analysis and judgment were opened to laymen, the standards of the legal profession would be adversely affected if the advertising continued, not only because standard services would be put at a competitive disadvantage, but also because modern advertising has a tendency to create its own market.

109 In offering these conclusions this Comment does not purport to pass definitive value judgments on the particular systems involved. Of greater interest at the moment are the general characteristics of these services as they make possible general inferences of what other future services or commercial enterprises may offer.

restricts its product to lawyers. The reason for this restriction is partly economic: these services depend to a great extent on subscribers who will be frequent users. The present cost of introducing new users to the system does not make feasible the servicing of laymen whose needs are usually met by single searches. This, of course, is a business judgment which these services may properly make. However, one service has suggested that an additional reason for the exclusion of most laymen was the "cloudy" ethical situation. Unless the unauthorized practice and ethical ramifications are clarified, laymen may be barred from access to computerized retrieval services; little will be done to clarify that situation unless the present unauthorized practice doctrine is defined in the light of possible future computer uses.

At the present time the exclusion of laymen presents no real problem. Laymen who wish to have access to "the law" are few in number, and present access to published materials seems adequate. However, if commercial retrieval services enjoy financial success, and fulfill their present promise of being a substantial improvement over present methods of digesting and indexing, it is possible that the popularity of manual retrieval will decline. Such a decline may well be accompanied by an increasing unavailability of manual retrieval devices.

If such a situation comes to pass, exclusion of laymen from automated retrieval systems may be a denial of their right to have access to "the law." That such a right exists seems undeniable; its scope, however, is far less clear. Most of the litigation in the area has been concerned with prisoners' rights; in such cases, the right of access to the law has appeared as a corollary to the right to reasonable

\begin{enumerate}
\item Interview with L.R.S. staff member, November 16, 1967.
\item Interview with A.L.S. staff member at the University of Pittsburgh, August 10, 1967.
\item A very strong argument for the general accessibility to all laymen has been written by R. N. Freed, Division Counsel for Honeywell, Inc., Computer Control Division. Freed, *Computer Law Searching: Problems for the Layman*, DATA MINATION, Oct., 1967, at 41.
\item Several states have made provision for manual access by laymen to legal materials. This may be done by providing for deposit of state reporter in various public libraries, e.g. *N.Y. Judiciary Law* § 434(6) (McKinney Supp. 1967); by establishing county law libraries with provision for free and open access by the public, e.g. *Ill. Ann. Stat. ch. 81, § 81* (Smith-Hurd 1966); *Wis. Stat. Ann.* § 256.41 (Supp. 1967); or by providing that legislative journals and supreme court reports be set aside for public use in the offices of a town clerk, *Conn. Gen. Stat. Ann.* § 7-35 (Supp. 1966). The most liberal of these provisions is that of California, which establishes county law libraries, free to all residents of the county, to be supported by receipts from filing fees in the county courts. See *Cal. Bus. & Prof. Code* § 6341 (West 1962); Drummond, *California's County Law Libraries*, 48 A.B.A.J. 320 (1962).
\item The "notice" requirement of the void-for-vagueness doctrine—that a statute must by its terms give fair notice to the persons affected thereby—would seem to have as an inseparable corollary that the terms giving such fair notice must be reasonably available. See generally Note, *The Void-for-Vagueness Doctrine in the Supreme Court*, 109 U. Pa. L. Rev. 67, 82 n.79, 85-88 (1960).
\item The absence of litigation in the area may be due simply to the fact that interested laymen have always had reasonable access to both federal and state legal materials. Cf. note 114 supra.
\end{enumerate}
access to the courts guaranteed by the due process clause. In such circumstances, countervailing state interests (such as the need to maintain prison discipline), not present when the person asserting the right is not being held in confinement by the state, have usually won the day. At least one case, however, has suggested that even prisoners have some rights of access to legal materials, and the decision has since received favorable comment.

It has already been mentioned that presently-available manual services seem to fulfill whatever are the constitutional requirements of access for the layman. It is doubtful that any problem is likely to arise in the future. One condition precedent to the eventual widespread success of computerized retrieval may well be the elimination of any element of legal judgment by members of an incorporated service. If that element is eliminated, all laymen should, given the earlier analysis, qualify as proper users of simple, full text systems. Should mechanized operations become the common method of storing and retrieving legal literature, the layman would enjoy as much or more access to the law as he does at present.


118 See, e.g., Walker v. Pate, 356 F.2d 502 (7th Cir. 1966).


120 It seems that there should be a right—and of necessity a remedy—to engage in legal research which is intimately connected with a prisoner's access to the courts—especially when the prisoner is unable to procure counsel. Note, Constitutional Rights of Prisoners: The Developing Law, 110 U. Pa. L. Rev. 985, 993-94 (1962). Cf. Note, Legal Services for Prison Inmates, 1967 Wis. L. Rev. 514, 523-24 (1967) (suggesting on the basis of personal experience that libraries accessible to prisoners are of minimal value).

121 See note 114 supra and accompanying text.