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Michael D. Scott

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BOOK REVIEW

COMPUTER LAW: EVIDENCE AND PROCEDURE

By David Bender

(Matthew Bender & Co., 235 East 45th Street,
New York, New York 10017, 1977, looseleaf, \$50.00)

Normally, book reviewers approach their subject matter "cold"—having never seen the volume before; perhaps, though not always, having heard of the work; and hopefully, having some familiarity with the field of law addressed. While such an approach may insure a certain degree of objectivity in the review, it more often leads to an unintentional distortion by the reviewer of the thrust and import of the volume in question. This is particularly true in reviews of legal treatises, which are normally not intended to be read from cover to cover, but are written to be used when the reader is faced with a particular problem.

I have had the pleasure of using this book in my litigation practice for a considerable time period before approaching it as a reviewer, and I have hopefully gained some insights into the author's approach and his purpose in writing this volume that I would not otherwise have.

For a litigator, this book is clearly the first place to turn for computer evidence questions. It has proven its utility repeatedly in actual "combat" situations, and is well worth its cost on that basis alone. This is not to say that the book is without its share of flaws. Perhaps because of the embryonic nature of the field in question, or perhaps because of the page requirements imposed by the publisher—or maybe for reasons that cannot be articulated, Mr. Bender was not satisfied with providing a concise and lucid exposition on the law of evidence and the rules of procedure as they apply in the computer environment, but included in this volume a large mass of other materials, some tangentially related, some not, which do not add to the basic exposition contained in chapter 5-9.

Perhaps because I find those chapters so useful, I should not be critical of those portions of the volume I find less satisfying. However, since the area covered by the book is in a period of rapid development, and since this book will be updated periodically, I can hope that the author and the publisher may opt for replacing the less useful materials with those of more value, rather than simply expanding all segments of the book equally.

Before proceeding with a discussion of what this treatise is, it is important to enumerate what it is not. First and most important, this book is not an exposition on the entire field of computer law. Though its title may be somewhat misleading in this respect, the book focuses on only two important legal aspects—evidence and procedure—as they apply to computer technology. To expect more from this book is to be unfortunately, and unnecessarily, disappointed. There simply is no treatise currently in existence which addresses the entire field. The fact that Mr. Bender does not do so should not denigrate from the effort that he has made.

Second, this is not a “how-to” book. While chapter 10 consists of a hypothetical fact situation and a simulated “trial,” the author disclaims any attempt at completeness, stating at the outset that the material is “solely illustrative.” This is not to say that the reader is left totally adrift on uncharted waters. The author does discuss a variety of fact situations involving computers and the evidence generated by computers, as well as providing helpful suggestions on the presentation of computer evidence in court and before administrative tribunals.

Third, this book is not an exposition on basic evidence law or procedure for the layman or neophyte attorney. While the author endeavors to provide a brief explanation of each legal concept when it first appears, the description simply does not explain the concept sufficiently to permit the uninitiated to fully comprehend the subtle nuances of evidence law or procedure.

While written in ten chapters, the book neatly breaks down into four sections. Each of these sections has its own subject matter, approach and writing style, and indeed, each appears to be directed at a somewhat different audience.

Chapters 1 through 3 contain a description of the computer industry, computer technology and computer applications, respectively. These chapters cover in great detail the history and structure of the computer industry, computer hardware in all of its guises, computer software and services, and the major applications of computers in American society today. Though interesting and well-written, it is doubtful that one-third of a legal treatise should be devoted

to such non-legal matters. There are literally dozens of books on the market today that competently cover these matters, and are readily available at every neighborhood bookstore. Why provide such in-depth coverage in a volume of this type?

For example, Mr. Bender devotes a full eight pages to a description of punched cards and the hardware that reads them. This is followed by ten pages on magnetic tapes and tape drives. Is this degree of detail really necessary? Even assuming that the reader has absolutely no familiarity with card readers or magnetic tape drives, does he need this much explanation in order to understand the admissibility issues involved with this kind of evidence?

When one reaches Chapter 4, he finds an entirely different sort of materials. Entitled "Situations Illustrative of Legal Problems," this chapter provides a thumbnail sketch of computer law as a whole. While the first three chapters suffer from overkill, this one is simply too brief (forty pages) to be of real value to anyone researching these subject areas. Perhaps Mr. Bender is intending to expand this section in future updates to broaden the scope of the treatise to encompass all segments of computer law. If so, I will applaud his effort. Unfortunately, at its present length, chapter 4 is too short to be of any real use.

The third section of the book, and that which is the "meat" of the volume, is chapters 5 through 9. These chapters contain a superbly written exposition on evidence law and procedure as they apply to computers. The author has gathered virtually every case from every jurisdiction which addresses these areas and has distilled them into an analysis that is both readable and informative. Mr. Bender has taken great care in organizing the materials in a logical and cogent manner. The only weak spot in these chapters is Appendix 9A, in which he reprints four law articles by other authors that discuss computer litigation support. Why the author did not provide his own analysis of this area is unclear.

The last segment of the book is chapter 10 which, as already discussed, presents a mock trial involving computer evidence. Again, the value of this material is questionable in a treatise of this kind, though it might be proper in a casebook or tutorial volume.

Though one can only speculate on the reasons for the compilation as it currently exists, it would appear that it was developed using the "something for everyone" philosophy that pervades the law book industry today. Mr. Bender has written extensively on computer evidence and procedure, and his expertise is evident in chapters 5-9. One can only surmise that the publisher felt that the book would not be marketable at two hundred pages in length, and re-

quired that it be "beefed up." Unfortunately, this "filler" has a tendency to detract, or at least hide, the exceptional nature of the key chapters. One can only hope that as the field matures and this book is updated, this "filler" will disappear, to be replaced by more of the excellent legal analysis for which Mr. Bender is known and respected.

Michael D. Scott