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Foreword

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FOREWORD

*Catherine Crier**

As in years past, the 2004 Annual Survey of Texas Law again provides an excellent review of important legal changes in our jurisprudence. However, it should also serve another vital function. With the number of statutes, regulations and legal decisions that appear each year, it can be difficult to focus on larger trends in law, but this exercise is critical to the integrity of our justice system. The Survey allows us to examine not only individual cases that affect a certain specialty but this larger evolution of our justice system as well.

In 2002, I published my reflections on the Rule of Law regarding its use and misuse in modern times. More than an anecdotal review of problem cases, I wanted to ascertain whether there were discernable patterns in legal developments that should concern practitioners. I concluded that “the law” has become more than a means of redressing disputes or refining legal principles. Enmeshed in process more than principle, many laws no longer reflect their original legislative or judicial intent. Additionally, these regulations and statutes are frequently used as tools of influence, authority and control in a manner that can harm a free society.

“Ignorance of the law” should now be a presumption rather than a rebuke for noncompliance. Not only are citizens at a loss when trying to play by the rules, but attorneys should worry that increasing complexity will mandate specialization to counter charges of malpractice. The conflict between legislative purpose and resulting case law is growing as broad original intent becomes lost in microscopic regulation. Reasonable standards for human conduct and the notion of liability based on actual responsibility are no longer governing tenets for most actions. The idea that rules should be, as much as practicable, no more than a broad restraint on identifiable conduct has all but disappeared. Attorneys are both guardians of the law and private citizens affected by these developments and should wear both hats when examining the long-term effects of our work.

The Survey is also a time to review judicial independence within the courts. Whether we define the parties as the plaintiff and defense bar,

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liberals and conservatives or Democrats and Republicans, these groups regularly dispute the effect of campaign contributions on appellate case review. Whether justified or not, these charges have heightened public suspicion regarding fairness in our courts. Even judges express these concerns. In the landmark ABA Justice at Stake survey in 2002, only twenty-six percent of local and state judges stated that big donors actually received special treatment, but seventy-four percent said the issue was a real concern and eighty percent believed that influence was indeed the goal of most large contributors. A careful analysis of the evidence or lack thereof will enable lawyers and judges to address these complaints.

For years, the Survey has proved to be an invaluable tool for attorneys trying to keep apace of our changing laws. However, Texas lawyers are more than practitioners of an art affecting limited groups at any given time. We are the sentinels for something much greater. We must acknowledge our role in the evolution of the justice system and take responsibility for change, both good and bad. The Survey is an excellent opportunity to monitor our influence and examine the more sweeping changes we are making in the fabric of Texas society.