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Introduction

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ANNUAL SURVEY OF TEXAS LAW

INTRODUCTION

I.

Last year the students and faculty of the Southern Methodist University School of Law launched a new project—the *Annual Survey of Texas Law*. The project was comprehensive, ambitious and challenging. It also turned out to be a success. It is entirely proper, therefore, that their work be encouraged and continued in this, the second such survey.

The average lawyer, it has been said, is intelligent but is not an intellectual. If this means he does not seek legal knowledge solely for the sake of learning, the statement is probably true. For, as a lawyer becomes progressively involved with the concerns of his practice, his horizons become more narrowly focused upon those things of immediate interest. He is fully occupied in attempting to solve his clients' current problems, hoping somehow to meet tomorrow's deadlines and worrying that perhaps yesterday he overlooked something of importance. He lives in a modern explosive society in which human and legal problems become increasingly complex and the answers increasingly vague. His desk is the end repository of a daily torrent of changing laws, decisions and rules that affect almost every phase of human endeavor and that seemingly come from ever-expanding sources. Somehow the lawyer must find enough hours in the day to keep informed. Given the opportunity he must and he will meet the challenge. He will find a way.

Ours is a great profession whose continued existence is a vital and absolute necessity to the successful administration of justice. But the survival of the profession can only be assured, so we have come to realize, by increasing the competency and standards of the individual practitioners and judges through continued learning. How is this to be done? This is the question. And it has not yet been completely solved although it has engaged the best minds in our profession for the past thirty years. Who should bear the responsibility for the continuing legal education of the practicing lawyer? Is it to be the organized bar, the law schools or the extension service of a state university? What is the role the law schools should play? Is any law school, already heavily burdened, really equipped or ready to participate fully and meaningfully in the continuing education of the *practicing attorney*?

These are only some of the questions which need not and cannot be explored here. The point I would make now is that this law school has seized an opportunity to serve the profession in an area of need. Probably there are none who will believe that an annual survey of Texas law is all the continuing legal education a lawyer requires. Most would admit, however, that it is an important step. All will agree, I venture to say, that the law school is especially equipped to undertake such a work.

And so I am particularly pleased to commend the Editors of the *Southwestern Law Journal* and express to them the gratification of the lawyers of Texas.

Thomas M. Phillips
President
State Bar of Texas

II.

Again this year the editors, members of the faculty, and guest authors have undertaken to present the *Annual Survey of Texas Law*. The response to last year's *Survey* issue was so enthusiastic that the editors decided to make this year's *Survey* a special additional issue.

President Phillips of the State Bar of Texas in his introduction states convincingly the case for this kind of effort. The avalanche of cases, rulings, regulations, interpretative comments, digests, and study aids of various sorts frustrates and confounds the busy lawyers seeking conscientiously to keep abreast of new developments in the law. There is not only the measured pace of change, taking place perhaps more slowly albeit inevitably, in the traditional areas, such as contracts, torts, property, and administration of estates, but also the rash of new developments in taxation, labor law, administrative law, securities law, and corporate and commercial law. The growing urbanization of society engenders more abrasiveness in the relationships of people to one another and to their property. Indeed, people living in close range cause new problems which heretofore have not been the subject of legal regulation, or, if regulated, have not been of serious concern to the community. Air pollution, water pollution, airport noise control, sanitation problems, urban transportation and a host of other matters test to the utmost the ingenuity of lawyers and the law to deal effectively with the aggravations and irritations of people living in community.

The law practitioner of yesteryear had some time to contemplate reflectively on the law and its application to the problems of the day. The demands on the lawyer now are ever so much greater, yet the techniques of research have changed very little. No computer or para-professional can scan the statute or regulation for those nuances of meaning and interpretation, nor can anyone but the trained lawyer plumb the depths of the judicial or administrative decision for that phrase, that comment, that distinguishing characteristic of fact pattern or legal analysis that sets this case apart from others in the stream.

Nevertheless, as Mr. Phillips observes, some way must be found for the lawyer to find assistance in confronting the overwhelming task of being *au courant* in his discipline. The law schools—professors and students—have been isolated in the past from the practicing professional community. In recent years the barrier between the two communities has been broken as lawyers return to law schools to participate in a variety of programs of

continuing legal education. The *Survey* issue is another of the mechanisms for bridging the gap between student-lawyer and lawyer-teacher on the one side and the practicing bar and bench on the other.

The editors have wisely opted in favor of a format that would not merely reflect a summary of headnotes of recent cases but would instead present within the space limitations imposed a thoughtful, critical, analysis and synthesis of important cases in the major fields of Texas jurisprudence. We congratulate them on this splendid service to the entire legal community.

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PART I: PRIVATE LAW