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Forward

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FOREWORD

This is the third year in which the faculty members of the Vanderbilt Law School have prepared the Annual Survey of Tennessee Law.[1] The undertaking is, of course, primarily for the benefit of the members of the Bench and Bar of Tennessee. We hope that they have found it sufficiently useful to justify the effort and expense involved. The first Survey was confined almost entirely to the decisions of the State Supreme Court and the Court of Appeals. It has now been expanded to provide for systematic inclusion of federal decisions involving Tennessee law and occasionally even decisions of other states when they interpret or apply Tennessee law. Unfortunately, the acts of the last session of the General Assembly have not become available in usable form in time to be incorporated in this year's Survey. Some attempt has been made to include decisions and regulations of state administrative agencies; further development along this line is being studied. Attempts to include unreported opinions of the state appellate or trial courts have been contemplated but have not appeared feasible. Suggestions from members of the Bar for improvement of the Survey will be sincerely welcomed.

The Survey has proved a larger and somewhat more difficult enterprise than was originally contemplated; it has also proved more valuable to us who have prepared it. One may scan the advance sheets and think that a hasty inspection of the opinions is keeping him adequately acquainted with developments in various fields of law. But when he tries to write down these holdings in a systematic fashion and show how they fit into the existing law in the state and how they compare with the law in other states, he begins to realize how incomplete was the impression obtained when he merely perused the opinion.

As we have prepared the articles for the Survey, one matter particularly has troubled us. Occasionally we have offered critical comments concerning some of the decisions discussed. We are anxious that the lawyers and judges of the state understand the spirit in which

1. This Survey covers, approximately, those cases which were reported during the period from June 1, 1954, to June 1, 1955. Volumes of the National Reporter System covered are as follows: 267-277 S.W.2d, 209-220 F.2d, 120-129 F. Supp.

this is done. The comments are not made under the brash assumption that we are better qualified to make the decisions and write the opinions than are the judges, but are instead offered respectfully and in the hope that they may be of value to both judges and lawyers.

Recently one of our members was reading a book by one of the great law teachers of the country. It contained some remarks which are very pertinent here and which we should like to quote in full as expressing our own attitude:

> "To the judges whose opinions we criticize and who may chance to read what we have written we must often appear as captious and intolerant critics. To . . . them I would like further to explain.
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> "First, we necessarily become specialists, not merely in law but in relatively narrow fields of law. We are given time and opportunity to read widely and to think through problems in light of what we have read. We American law teachers have at our disposal time and opportunity to read the opinions of all the American courts which touch our specialties, together with those of many of the courts of other countries, as well as the mass of relevant legal and non-legal literature so far as lies within our language limitations. We have the opportunity of discussing our special problems with others, not only with the members of our own law faculty but also with the members of other faculties in the university, who have knowledge of economic and social factors which bear upon these legal problems. We claim no superior intelligence. Most of what we know is second-hand and we act merely to pass on the knowledge and insight which our duties require us to acquire.
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> "A judge, on the other hand, is a specialist in law, but unless he is a judge in a court dealing with a narrow range of subjects, as in a probate, patent or tax court, it is seldom that he can be a specialist in any particular branch of the law. He is obliged to rely for his knowledge of the particular problem largely upon what the attorneys for the litigants bring to him. His area for decision is as broad as the law and except as he can find material in the briefs of the attorneys, each of whom is tempted to present a distorted picture, he must rely primarily upon his acquaintance with general principles, his intimate knowledge of a relatively few cases and his sense of fairness. When life was less complex and controversies relatively simple, the cases for him to read and the subjects for decision far less numerous than at present, it was not too difficult for a judge or a lawyer to know a great deal about all branches of the law. This of course is no longer possible. A judge may be called upon today to untangle a snarl in a corporate reorganization requiring intimate knowledge of many diverse matters of fact, or to determine an intricate tax matter which may depend upon a succession of more or less conflicting federal and state statutes. In the same way that in the law schools we now find it difficult to give to the students in three years an adequate presentation of even the fundamental problems which a lawyer is likely to meet in practice, so too the judge finds it increasingly difficult to attempt to encompass the whole range of the law.
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> "Secondly, a judge must reach a decision. He cannot, as we law teachers tend to do, present the argument for both sides and all too often reach only the conclusion that it is difficult or impossible to say what the result should be. Nor can a judge properly postpone decisions,

as we can, until a happy solution strikes him. He must decide. All of this means that I fully realize the difficulties which judges have and especially those whose calendars are so filled with cases that even the most facile must find difficulty in having time to clear his mind and organize his reasons. Thus if we who scrutinize the cases in the light of our special knowledge do not occasionally find inconsistencies and intellectual solecisms in opinions and sometimes criticize inadequate explanations for dubious results, it would mean either that the judges are supermen or that we are not performing our functions. In most cases, we cannot properly blame the judge, although disagreeing with his result. Furthermore, we should be conscious of the fact that even as we criticize we may be wrong; we may be prisoners of our specialization. We may fail to understand forests because of an over-minute examination of individual trees. At best our criticisms are colored by our academic life. At worst they are unreal.

"This explains why although I have often criticized and shall continue to criticize decisions with which I disagree, I have a profound respect for judicial opinions and the law which the judges have developed."[2]

2. SEAVEY, COGITATIONS ON TORTS 48-50 (1954). The *Vanderbilt Law Review* expresses its appreciation to Professor Seavey and to the University of Nebraska Press for their permission to quote at length from this work.