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Reviewing the Law Reviews, Texas-Style

By Jim Paulsen and James Hambleton

All is not well in the publish-or-perish world of legal academia. The number of legal periodicals is growing explosively, and is now more than 700. Established law reviews are sneaking more and more pages of text into each volume. There is a growing consensus, however, that genuine legal scholarship is not expanding at a pace sufficient to fill all these blank pages. Seminar speakers advise new law professors that somewhere there is a law review willing to print anything a professor is willing to put on paper; a little browsing will confirm that those lecturers know whereof they speak.

Moreover, much contemporary legal scholarship is traveling down the roads of "comparative" or "critical" this-and-that or "law-and-whatever" movements. However fascinating and ground-breaking some of these ideas may be, it is well-nigh impossible to work them into the day-to-day business of advising clients or trying and judging lawsuits. It is little wonder that many practitioners and judges are refusing to wade through the 150,000-plus pages that law reviews pump into the "junk stream" of legal literature every year. In these recessionary times, when library budgets and available shelf space are shrinking, a close look into the usefulness of law reviews therefore begins to make sense.

Beginning as early as the 1930s, studies of the "real-world" impact of law reviews have appeared in print. Typically, the author will count citations to law reviews in court opinions or other law review articles, and conclude which law reviews are the "best" or have the most apparent influence on courts or legal scholars. From a Texas standpoint, these studies usually hold little interest, since most of our state's school publications are too new or too provincial to make the national law review hit parades. Fortunately, a decent Texas-oriented statistical study has moved to fill this gap.

Laura Justiss (formerly of Locke, Purnell, now with Mead Data) recently did a cite count of seven Texas-published law reviews as part of a master's degree program. The results of her study were rescued from academic obscurity by a reader who suggested that she submit the manuscript to the American Association of Law Librarians. The AALL in turn was impressed enough to ask Justiss to present the paper at its 1992 annual meeting and to be recognized as the author of the AALS's outstanding student paper of the year. The full findings will no doubt be published in the near future, and we would not want to hurt Justiss' publication prospects by revealing all the juicy details. Nonetheless, we could not resist devoting a column to a headline news summary.

While many of the figures confirm widely-held beliefs, there are one or two surprises. Perhaps the biggest surprise is the overall "winner" in the combined total of federal and Texas appeals court citations to articles produced during a 20-year period (1970-89) in the state's "front line" law reviews: the St. Mary's Law Journal. With its emphasis on practice-oriented materials, sometimes authored by distinguished jurists (Judge David Hittner and former Justice William Kilgarlin account for many of the recent citations), the St. Mary's Law Journal barely nudges out the venerable Texas Law Review for the number one position. The St. Mary's Law Journal's strength is also reflected in its strong first place ranking in citations by state judges over the same 20-year period.

The Texas Law Review's overall showing reflects some success in the school's attempt to "go national." Articles appearing in the Texas Law Review between 1970 and 1989 were cited by federal courts more often than all the state's other law reviews combined. On the other hand, the Texas Law Review drops to a distant sixth place in citations by state court judges. This showing confirms the derogatory mutterings sometimes heard in the hallways of Texas courthouses (or even, rumor has it, in impromptu remarks by a former Texas Supreme Court chief justice at one Texas Law Review banquet).

The SMU Law Review, which recently has undergone a name change from the Southwestern Law Journal in an apparent effort to enhance its national name recognition, occupies a unique second place showing in citations by both federal and state appellate courts. The strong showing in federal citations might be explained by the journal's general emphasis of federally-oriented articles; the strong showing in state courts is due largely to Southwestern's annual survey issue. Our rough count indicates that the annual survey issue accounts for about two-thirds of all Southwestern's state court citations, with Joe McKnight's perennial "Family Law — Husband and Wife" contribution holding a commanding lead within the issue.

While having nothing to do with Justiss' figures per se, we cannot resist adding a side comment or two on this subject. While "annual survey" articles tend to be discounted whenever law school faculties get together to count up scholarly productivity for tenure decisions, they do seem to provide a singularly useful service to the bench and bar. For example, the Southwestern Law Journal's "annual survey" issue accounts for more than half of all court citations to that publication, including a substantial number of all federal court citations.

One study result reflects a real oddity in the history of Texas law reviews. The South Texas Law Review (or "Journal," until a couple of years ago) comes in with a dismal seventh place showing in the overall standings. While this standing may perplex those who glance over the contents pages and notice occasional good — even great — articles (former Justice C.L. Ray and Yogi McKelvey, Judge David Hittner, Harvard Law Prof. Arthur R. Miller, and Circuit Judge Edith Jones, to name a few of the more recent), the news should come as no surprise to anyone who has tried to cite any article printed in the South Texas Law Journal prior to 1985.

For some obscure reason, the editors of the first 25 volumes of the South Texas Law Journal did not follow the near-universal
The SMU Law Review may also be worth keeping on the shelves, at least so long as the editors continue to produce the "annual survey" issue. And the Texas Law Review may be attractive if one has a substantial federal practice.

Of course, no study of law review citations can provide an answer to the question of how influential law reviews really are. For one thing, courts represent only one branch of our tripartite system of government. Who can say what influence the continuing Baylor Law Review series on administrative law might be having on Texas administrative agencies? And what "significance" does one assign to a Texas Tech Law Review article that advocates legislative change, a change that was adopted at the next session after the article was published? Such an article will rarely, if ever, be cited by courts. Yet it might have had more real-world impact than any two or three dozen court citations.

Even limiting the question to the courts, the fact that a judge may cite a law review article does not mean the article actually influenced the court's decision. Articles may be cited as a courtesy to the author, as a sign of school loyalty by a judge or briefing clerk alumnus, as a bibliographic reference in a string cite, and so on. On occasion, judges even cite law review articles to disagree with the ideas proposed in those articles. Conversely, a law review article may be very helpful to a judge or litigant, providing ideas, references to other authority, and convenient summaries of complex lines of cases, yet never be cited. No rule requires a judge to cite every law review article found to be helpful in arriving at a decision, and some judges prefer to avoid citations to "secondary" authority whenever possible.

It would be interesting indeed someday to read a law review citation survey that included content or "impact" analysis, if such a survey could be devised. Until that day, however, citation studies—typified by Justiss' well-executed effort—are the best we have. Look for it in print!

Jim Paulsen (J.D. Baylor, LL.M. Harvard) is an assistant professor of law at the South Texas College of Law. James Hambleton (J.D. George Washington, MLS Michigan) is a professor of law and director of the law library at Texas Wesleyan University Law School. Carl Selesky, a second-year student at South Texas, nearly went cross-eyed counting Shepard's cites to verify some of the oft-land assertions found in this column. The legal research column is a semi-regular feature of the Texas Bar Journal. The writers welcome comments and suggestions for topics to be covered.
BOOK APPRAISALS

The Lawyer's Guide to Writing Well
Goldstein, Tom, and Jethro K. Lieberman.
1989, 274 pp. $19.95; Berkeley: Univ. of

This book lives up to the promise of its
title — a guide for lawyers to write well.
The authors are eminently qualified in their
professional capacities as director of a law
school writing program (Lieberman) and as
dean of a graduate school of journalism
(Goldstein). The authors, who teach the art
of writing to lawyers in firms throughout the
country, conducted a survey among hundreds of lawyers, professors, and judges
on their annoyances with lawyers' writing.
The results have yielded many pertinent
and meaningful examples. This originally-
conceived work appeals to practitioners
because of its emphasis on the practical,
convincing lawyers to improve their writing
for such compelling reasons as efficiency
and profitability.

The authors urge lawyers to use journal-
listic devices like the lead paragraph, which
would provide unique, striking introduc-
tions for their documents without detracting
from the substantive legal meaning. They
even insist that large firms should coordi-
nate writing functions much as publishing
houses do, with definite allocation of writ-
ing, editing, and proofreading tasks. Their
recommendations are set forth in a suggest-
ed law firm writing audit.

Goldstein and Lieberman also utilize the
composition teacher's methods. They look
at writing as a process and recommend that
lawyer-writers not only examine — before
they write — the purpose and audience for
each document and then try to allow time
for ideas to solidify, but also carefully edit.
A list of 10 steps highlights this process.

In a long, detailed chapter, basic usage
and language points are illustrated through
numerous examples of practical problems
taken from the survey and other sources,
and immediate solutions are given. The
chapter, though well designed with bold
heads, indented excerpts, and adequate
spacing, may cause readers who scan for
particular points to miss major parts of the
content.

A glossary and a list of writing authori-
ties are useful for the general, as well as the
legal, writer. Of the few flaws that have
crept into this work, prime offenders are the
overloaded discussion of the parenthetical
use of the comma in the text and the con-
fusing and misleading explanation of "due
to" in the glossary.

Among the legal writing texts that have
proliferated in recent years, this book
stands out for its unique features and its
obvious concern for lawyers rather than law
students. All lawyers who wish to improve
their writing should have this indispensable
guide in their offices.

Ruth Tone
El Paso

What Every 18 Year-Old Needs
To Know About Texas Law
L. Jean Wallace. Austin: University of
Texas Press, 1992, 165 pp., $19.95 cloth,
$8.95 paperback.

A better title for this concise volume
might have been What Every 18 Year-Old
Wants To Know About Texas Law. Despite
the lawyer-knows-best sound of the title,
Wallace's new book speaks more to the
questions that 18 year-olds really ask than
to what the title implies — and well it
should. As the students' attorney at Texas
Tech University for 11 years, Wallace
answered those questions on a daily basis.

The book is written in plain language,
unencumbered by a lot of legal citations,
and with no expectation that the reader will
have any working knowledge of the law. It
is written, in short, on the level of the stu-
dent who came into Wallace's office one
day with a question about her lease. "How
long is it?" Wallace asked. "About this
long," the student replied, holding her
hands 14 inches apart.

This is not to suggest that the practicing
lawyer would have no interest in the book.
The topics it discusses are of universal
interest — we all drive cars, buy consumer
goods, and enter into personal relationships.
Clients browsing through a copy while sit-
ting in your waiting room will likely think
of questions that could be turned into bill-
able hours later.

At the same time, the book can serve as a
quick source of reference to answer those
pesky little questions on forcible entry and
detainer, traffic tickets, and consumer
affairs that most lawyers know in the back
of their minds but do not deal with on a
day-to-day basis. The scope of the book is
surprisingly broad, and it contains a com-
plete index that will let you put your finger
on the relevant discussion while your client
is still on the phone.

More than half of the book is devoted to
motor vehicles, insurance, and "pranks and
other crimes." There is a comprehensive
discussion of what motor vehicle insurance
covers and what it does not, and what civil
and criminal consequences can result from
an accident. The chapter on criminal liabil-
ity discusses the types of crimes — from hot
checks to drugs — with which teenagers,
tentionally or not, are most likely to be
involved. The remainder of the book con-
centrates on landlord-tenant, marriage,
property, and consumer and employment
law — the other principal areas of interest
to the nascent adult.

Wallace adopts a conservative, logical,
common-sense approach to the advice she
offers her readers. She begins with six
"Rules to Live By," such as "Life is not fair"
and "Anything that sounds too good to
be true usually is." She counsels polite
behavior, especially toward authority fig-
ures. She does not take any knowledge of
the subject for granted and endeavors to tell
the reader not only what the law is, but
what it is not. No law, for instance, requires
a business to give a refund if a consumer
decides he or she does not want the item;
an employer cannot fire an employee for refus-
ing to do an illegal act but the law generally
does not prohibit him from waiting awhile
and then firing that employee for no cause
at all; a patrol officer does not have to show
someone he stops the speed that person is
accused of going on locked-in radar.

The one thing that sets this book apart
from others in the now-you-are-an-adult
genre is that Wallace remembers to include
the wisdom of experience that becomes sec-
ond nature to more mature adults. For
example, in one of the "True Stories" inter-
spersed to illustrate a point, Wallace
describes a young man who ran up a high
credit card debt, lost his job, and could not
find work for months. He finally found new
employment for less pay and was subse-
quently hounded by a collection agent. He
came to Wallace complaining that the bill
collector kept him on the phone for an hour
and made him late for work. She suggested,
simply, that he interrupt the agent's ques-
tioning, say goodbye, and hang up.

Wallace covers the rudiments of a law
in her book. The common thread run-
ning throughout is what to do to stay out of
trouble. She advised young people not to
try outrunning a police car, letting a
mechanic work on a car without a written
work order, and refusing to pay rent
because a repair has not been made.

The book is, for the most part, entertain-
reading. You probably will not find any

Correction
The Bluebook: A Uniform System of
Citation (15th ed. The Harvard
Law Review Assn., 1991, softcov-
er) sells for $7.50, not $9.95 as
published in the December issue.
other book that discusses the law on "mooning or taking a leak." The list of controlled substances is almost as tedious as the list in the statute, though, and it could have been relegated to an appendix. The only significant error I found was in a chart that showed all criminal appeals going directly to the Court of Criminal Appeals. Criminal appeals are really outside the scope of the book, however, so that is easily disregarded.

Young people get into legal trouble for two reasons: they do not know what the law is, and they do not stop to think about the consequences of their actions. This book would make a good text for a preparation for life class for high school seniors. And 16-year olds with cars or a propensity for mischief (or both) would also profit from reading at least the first half.

What Every 18 Year-Old Needs To Know About Texas Law will undoubtedly be popular among parents, grandparents, aunts, and uncles for graduation gifts. But the big question will be whether such a gift is just leading the horse to water. I hope the horse will be willing to drink.

Ralph H. Brock
Lubbock

A Primer for New Corporate Lawyers: What Business Lawyers Do

"L.A. Law's" Stuart Markowitz may be one of America's most recognizable office-based lawyers. But how might a real-life counterpart fill a typical work day? Clifford Ennico answers this question in A Primer for New Corporate Lawyers: What Business Lawyers Do. The topic is timely since most new lawyers are becoming office-based practitioners (the fastest growing segment of the organized bar), perhaps without a clue about the nature of the work.

Acting as reporter, the author provides clear, step-by-step descriptions of four principal tasks not considered suitable for prime-time viewing: monitoring the client's environment, counseling the client, managing the client's transactions (which included structuring, drafting, and closing skills), and negotiating on the client's behalf. The author draws from his Wall Street law firm experiences as his text from existing works which also discuss the transition made from law student to lawyer. Ennico's unique contribution is to focus on those skills that cause one to "think and act like a business lawyer." Moreover, to Ennico's credit, the book does not adopt a lawyer bashing tone. In effect, the new business lawyer is urged to develop client handling skills that factor in the differences between an MBA's and J.D.'s approach to solving business problems. Ennico repeatedly hammers away at this last point by suggesting ways to minimize legal risk while looking good in the client's eyes.

The author has clearly done his homework, as evidenced by the extensive selected and annotated bibliographies. Additional chapters touch upon other areas of concern to new business lawyers, most notably how the business lawyer deals with governmental agencies. The author concludes by giving some personal, paternal, and philosophical thoughts on defining success in one's chosen profession.

To the extent that one is interested in the subject of business lawyering, the book will be either insightful or tedious. (Some illustrations could only be appreciated by securities law fans.) Either way, it does answer the question, "Just what might a Stuart Markowitz do on a typical work day," ... in case anyone is asking.

C. Yonne Avina
San Antonio

Available for Review

If you are interested in reviewing one of the following titles for the Texas Bar Journal, please contact either Kristin A. Cheney or Mary Ann Nelson, Book Appraisals editors, at The University of Texas, Joseph D. Jamail Center for Legal Research, Tarleton Law Library, 727 East 26th St., Austin 78703, 512/471-7726. Book reviews are generally written by Texas attorneys.

