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Language of Law--Foreword

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THE LANGUAGE OF LAW

A Symposium

FOREWORD

By Justice Walter V. Schaefer

MUCH OF the story of the judicial process could be told in the form of case histories of the life and times of particular legal phrases. "Doing business," of recent memory, is illustrative.

The validity of service of process upon a foreign corporation depended on whether or not it was doing business within the state of the forum. Hundreds of thousands of pages of briefs and opinions compared the minute details of thousands of cases in the effort to determine whether the defendant was "doing business" within the refined meaning of that dominant phrase. And in the process of squeezing the facts of particular cases in or out of the concept, few lawyers and judges showed any concern for the essential fairness and relative convenience of requiring the defendant to respond in the forum in which the action was brought. The concept fell, partly because it was overloaded, but principally because insights, developed in the quest for jurisdiction over the itinerant motorist, showed its inadequacies.

THE AUTHOR (A.B., 1925, LL.B., 1928, University of Chicago) was formerly a professor of law at Northwestern University and since 1951 has served as a justice of the Supreme Court of Illinois.

Other concepts have had their day in the sun and their influence now wanes. Year by year, fewer specific performance, res judicata and estoppel cases are decided by the invocation — almost one might say the incantation — of "mutuality." The heavy charge of equity, that the word itself carries, no longer cuts off judicial inquiry into the results that it produces in actual operation. And in similar fashion, when rights or obligations are classified as "joint," an automatic result is less likely to follow today than a generation ago.

What is happening is that courts and lawyers are not stopping with the conceptual phrases. They are digging under them to see what lies there — to see what results are produced. If the phrase that served well in the case in which it originated is to expand its influence and determine other cases, it must prove its right to do so. There is great gain for the

law in this challenging attitude. It does not, however, permeate all ranks of the bar; and in the meantime knowledge of the processes of communication is not at a standstill.

It is the lawyer's business to master words; the risk that the law runs is that they may master him. If they do, and to the extent that they do, the law will fail to translate into action the ideals of the community. All aspects of the process of communication are vital to the lawyer and to the law. Awareness and absorption of new depths of understanding must begin early and must be continuous if they are to have a real impact. The more widespread the knowledge of general semantics, the less likely it will be that a happy turn of phrase can mean the end of thinking for a generation.