will not come any revolution, but there can come a helpful contribution to improvement in judicial opinions, both individual and general.

Were I to add a few formal words, I should say that the book is too long. It makes too many repeated servings of the same food. Also, it makes the mistake of trying to serve its readers as separate classes. The value of the book is in the general meat course which it provides, for over-all professional consumption, and not in the side appetites which it seeks to create by adding small doses of special-group seasoning. I think it weakens the force of the book to try to pass out something different or special in every possible direction—to judges, to practicing lawyers, to house counsel, to "law school skeptic" (and even to Dietrich ["They *are* wonderful legs"]).

For example, as to practicing lawyers, reckonability is hardly likely, in our American legal system, to become such a professional cult or pursuit as to have any noticeable effect on the dockets of our appellate courts. And as a concluding illustration, one cannot help wondering to what purpose and for what special audience the author has chosen to engage in a personal attack on members of the Supreme Court.

Within the book's general channel, however, to which it ought to have been limited, Llewellyn is entitled to credit for a thorough, thoughtful and provocative job, from which some measure of good in judicial opinion writing should come.

Comment—Laurance M. Hyde*

This book should be helpful to lawyers, particularly to lawyers who practice in appellate courts, as well as to appellate judges. Lawyers will better understand how appellate courts operate. Judges will better understand their functions and controlling factors in making decisions.

Professor Llewellyn finds a loss of confidence in appellate courts by the bar and the public which he demonstrates is unjustified and is due to misunderstanding of the judicial process. He finds that too many people have the impression that appellate courts decide cases unpredictably, according to their own feelings and desires, and not in accordance with definite legal principles. He shows that while certainty of results is impossible, because of the difference in factual situations, reckonability of results in appellate courts is high. He states this reckonability is partly due to many major steadying factors. Some of these are: judges law conditioned by training, legal doctrine guiding decisions, known doctrinal techniques, responsibility for

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justice, decision by written opinion, a frozen record from the trial court, issues limited, sharpened and phrased in advance by lawyers, adversary argument by counsel, group decision of cases by the court and judicial honesty and security. As he says, "All the persons who do the deciding do so as officers holding office in a tradition long known, clearly felt, and proud: the American appellate judicial tradition."[1]

It is noteworthy that Professor Llewellyn says the "corrosive cynicism" about appellate courts starts "with politically-minded or incompetent magistrates' or trial courts, and with favoritism, corruption, negligence, or abuse of patronage among policing or administrative personnel,"[2] and comments that he believes "the Missouri plan to be as good a general substitute model as has yet been devised"[3] for popular elections of judges to insure the obvious values of an independent judiciary. The importance of the improvements we have made in Missouri in the last twenty-five years can hardly be overemphasized.

Professor Llewellyn says one cause of lack of lawyers' confidence is "the desultory character of each lawyer's attention to any but odd cases and sequences from his own supreme court . . . ,"[4] blinding them "to the patent truths about that court's ways of going about deciding . . . ,"[5] and overlooking harmonious results in the run of usual cases. Likewise specialization by lawyers has prevented familiarity and understanding of the whole work of the courts. Furthermore, the growth of administrative agencies and the review of their decisions has brought many new kinds of questions to the appellate courts with which many lawyers are not familiar.

Professor Llewellyn also says he has been told by several judges, "that the general run of briefs which has come before his court—with of course many gratifying exceptions—seems . . . barely and scrapingly passable, or else inadequate or worse."[6] This calls to mind the following statement of late Chief Justice Arthur T. Vanderbilt of New Jersey:

> The Supreme Court and the Appellate Division are still harassed by many inadequate briefs and a considerable number of poor arguments. Where we have to do the work that counsel should have done on his brief and in his argument in order to

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1. LLEWELLYN, THE COMMON LAW TRADITION: DECIDING APPEALS 19 (1960) [hereinafter cited only by reference to page].
2. P. 193.
3. P. 33, n.24.
4. P. 141.
5. *Ibid.*
6. P. 30.

> do justice in a particular case and to make good by our individual research his shortcomings, we are not only called upon to do work that is not properly ours but we are deprived of the benefit of the argument of opposing counsel as to such new matter.[7]

Surely lawyers would be surprised at the amount of independent research, beyond authorities set out in briefs, that judges must do in almost every case. It would certainly be helpful for lawyers to read and follow the advice set out in the chapter on argument, pages 236-55 of this book; and it would also be most helpful to the courts for some of these suggestions to be followed. An appellate judge has great satisfaction in finding a case well briefed by both sides.

Professor Llewellyn's main theme is that in deciding cases appellate judges are getting away from the formal style of 1860-1920 (opinions which "run in deductive form with an air or expression of single-line inevitability")[8] and are returning to what he calls the Grand Style of the Common Law, the style of reason, which he says prevailed prior to 1860. In explanation of this style, he says:

> [T]hree properly controlling factors tower each alone, and geometrically in their product, above the will or individual urges . . . [of judges]. Those three factors: (bridle, breaking to harness, and guiding hand on the reins)—are the doctrinal structure, the craftsmanship of the law and of the office, and the immanent rightness, largely to be felt and found, which are embodied in the significant type of situation up for judging.[9]

Undoubtedly most judges seek to reach results which conform both to legal rules and to reason; results they feel are both good law and good sense. To do so they must consider precedent with good sense for the situation involved and with a view to sound guidance for the future. This is the essence of the Grand Style explained by Professor Llewellyn and the theme of his book is that the tendency of our appellate courts now is in this direction.

The Pursuit of Reckonability—Horace S. Haseltine*

The practicing lawyer is vitally interested in anything which will enable him to predict to a particular client what precise rule of law will be applied in that client's specific case. In his sometimes precarious business of trying thus to divine the future, the lawyer often longs for a workable set of crystal balls, tea leaves, or other exotic

7. Vanderbilt, *The Record of the New Jersey Courts in the Fourth Year under the New Constitution*, 7 RUTGERS L. REV. 317, 318 (1953).

8. P. 38.

9. P. 402.

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