

Spring 1975

Book Review

Follow this and additional works at: <http://scholarship.law.missouri.edu/mlr>



Part of the [Law Commons](#)

Recommended Citation

Book Review, 40 Mo. L. REV. (1975)

Available at: <http://scholarship.law.missouri.edu/mlr/vol40/iss2/6>

This Book Review is brought to you for free and open access by the Law Journals at University of Missouri School of Law Scholarship Repository. It has been accepted for inclusion in Missouri Law Review by an authorized administrator of University of Missouri School of Law Scholarship Repository.

Book Review

Robert A. Leflar: *Appellate Judicial Opinions*. St. Paul, West Publishing Co., 1974. 343 pp. (Foreward by Warren E. Burger, Chief Justice of the United States).

Members of the judiciary, like members of other professions, realize the critical need for a continuing education in their field of specialization in order to better serve our rapidly changing society. In 1955 Frederick G. Hamley, then Chief Justice of the Supreme Court of the State of Washington (now a judge of the United States Court of Appeals for the Ninth Circuit) became acutely aware that no law school trains men to become judges, and that no amount of law practice can, by itself, produce a good judge. To resolve this dilemma he decided to create a school for judges. He enlisted the aid of Russel Niles, then Dean of the New York University Law School. To the good fortune of the bench and bar—and of all who are affected by our courts—these two leaders sought and obtained the services of Robert A. Leflar, former Dean of the Law School at the University of Arkansas and former judge of the Arkansas Supreme Court, to help formulate, become the director of, and teach in what became the Annual Appellate Judges Seminar at the Law Center of New York University.

How and what does one teach the appellate judges of the nation? For the past nineteen years this is the question Judge Leflar has been endeavoring to answer. He has been aided by having had an ideal background as a law teacher and jurist. He has had the stimulation of his changing faculty of “teachers” at the Annual Appellate Judges Seminar. And he has had the exhilarating challenge of formulating and gathering the “teaching material” for each year’s “class” consisting of approximately twenty state supreme court judges, six to eight judges from the United States Courts of Appeals, and, occasionally, visiting judges from abroad, especially from England. The “graduates” have returned to their judicial duties with keener insight into, and renewed dedication to, the administration of justice. The impact of the Annual Appellate Judges Seminar on the nation’s judiciary has been immense—perhaps greater than any other influence in the last several decades.

From the beginning, the need for just the right kind of material for use at the annual seminars was painfully apparent.¹ For nineteen

1. This reviewer was a member of the “faculty” of the Appellate Judges Seminar in 1969 and agonized over obtaining appropriate teaching material for use with experienced, erudite “student judges.”

years Judge Leflar, with abounding energy and perseverance, has been acquiring the desired material, testing it in the "classroom" of the student judges, and evaluating it pragmatically and imaginatively. It is the essence of this collected material, skillfully edited, that comprises the book under review.

One of the early participants (1957) in the Annual Appellate Judges Seminar was Chief Justice Warren E. Burger, then a new judge on the United States Court of Appeals for the District of Columbia.² This is how Justice Burger described Judge Leflar's qualifications for writing this book:

"Professor Leflar has been at the helm of the Appellate Judges Seminars since their inception in 1956. During this period of time he has had an opportunity to listen to and to direct innumerable discussions on opinion writing, and through these discussions to identify the most troublesome problems encountered in this crucial aspect of the judges' craft. More than 600 state and federal appellate judges have explored and analyzed these problems with him since 1956. He is not simply a theoretician, for he was confronted with the problems of judicial opinion writing during his tenure as an Associate Justice of the Supreme Court of Arkansas. That experience, coupled with over 45 years of teaching and legal scholarship, provides unique abilities for understanding and identifying the basic elements of articulate and well reasoned judicial opinions. Moreover he has the powers of a trained teacher to impart his own rich experience to others."³

This accurate tribute by an experienced jurist assures anyone who reads this book that he, too, will be stimulated by the experience, enriched by the book's new ideas, thoughts and challenges, and will substantially improve his understanding of the judicial process.

At the outset of each of its fourteen chapters Judge Leflar includes a brief explanatory statement of the main thrust of the material in that chapter. These statements serve as an introduction to the well-selected, often provocative, excerpts from the writings of the authorities and brilliant minds in the particular field which constitute the essence of the book. These excerpts are drawn from material dating from the early English common law to the present. While the excerpts themselves serve a valuable educational purpose, they are intended to, and do, whet the reader's appetite for further research and study. To the author's credit, he further assists

2. Judge Leflar credits Chief Justice Burger with having suggested that a book for appellate judges was needed and that it should relate principally to the writing of judicial opinions and their function in American law.

3. R. LEFLAR, *APPELLATE JUDICIAL OPINIONS* iii (1974).

the reader by giving extensive citations to material needed for additional research and study, together with the author's personal and terse description of the contents of the cited material.

The scope of the book is expansive, covering virtually the entire field of appellate jurisprudence. Its fourteen chapters bear the following titles, which are patently insufficient to convey the breadth and richness of its contents: (1) The Appellate Judicial Function; (2) *Stare Decisis*—Precedent; (3) Courts and Statutes (Statutory Construction); (4) The Function of Opinions; (5) Decisional Techniques: Harmless Error; Judicial Notice; Statutes as Sources; *Sua Sponte* Consideration; (6) The Overruling Process: Prospective Overruling; The Intermediate Court's Dilemma; (7) The Writing of Opinions: Advice From Some of the Masters; Other Good Advice; Shorter Opinions; (8) Dissenting and Concurring Opinions; (9) Judicial Philosophies (Judge-Made Law): Quotations from Gray, Holmes, Pound, Other Writers on Judicial Process; Legal History; (10) The Judge and His Court (Court Administration); (11) Law Clerks and Legal Assistants; (12) Judicial Conduct and Misconduct; (13) Publication of Opinions; (14) Judicial Education.

The main thrust of Judge Leflar's book is best illustrated by the following excerpt:

There is no appellate judge in America who is not an "activist," in one realistic definition of the term. This is in the sense that the judge believes in improving the law, according to his lights, and affirmatively tries to do so. There are very real differences among judges, both as to what are the true directions toward where improvement lies and as to the proper rate of judicial movement toward them. But there are more today who are willing to move with fair speed, and to admit that they do so, than there were a judicial generation ago.⁴

Judge Leflar's historical approach to that thesis through selected extracts of material by outstanding lawyers and judges is absorbing and rewarding reading. His insight into the function of the judicial system as a part of our democratic government is subtly conveyed through the arrangement, with historical perspective, of the writings of great jurists. The effect far exceeds that of any single author endeavoring to convey the same message in his own words.

Judge Leflar's book is a unique collection of invaluable material never before assembled in a single source. It is destined to become an essential volume in the library, no matter how small or large, of

4. *Id.* at 4.

every appellate judge, and of every trial judge who needs to better understand the judicial function as illuminated in appellate opinions. It also offers much to the practicing lawyer or law teacher who needs to understand the appellate judicial process in all its complexities and relationships. Any layman who is curious enough to seek an understanding of the third branch of his government, the judiciary, will likewise benefit from reading it.

Few men have contributed as much to their profession, and society as a whole, as has Judge Leflar. As the product of his insight and years of experience, this book will long remain as his tribute.

ELMO B. HUNTER*

*Federal District Judge, Western District of Missouri; A.B., 1936; LL.B., 1938 University of Missouri; Cook Graduate Fellow, University of Michigan, 1941.

