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Book Reviews

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BOOK REVIEWS

The Labor Relations Act in the Courts. By Herbert O. Eby. New York and London: Harper & Brothers. 1943. Pp. xvii, 250. $3.50.

Books which deal with labor problems are seldom concise and exact. The subject seems to lend itself readily to pompous verbosity, glittering generalities and the exposition of panaceas for the nation's economic ills. The present work by Mr. Eby is in refreshing contrast to the general rule. Hardly a superfluous word is found in the entire volume. Concise to the point of terseness, the book gives one an impression which may be expressed as "cut and dried."

As books go, this must have been a surprisingly easy book to write. Much more than half of the printed matter is composed of quotations taken from decisions of the United States Supreme Court and the Circuit Courts of Appeals. The rest of the text is made up of short briefs of the cases from which the quotations are taken, outline headings under which the quotations are grouped, excerpts from the National Labor Relations Act and at the beginning and end of each chapter a short statement which summarizes the matter found in the cases and quotations included in the chapter and presents appropriate background material. Case and citation indices and the full text of the National Labor Relations Act and the Rules and Regulations of the National Labor Relations Board are included. A table shows the States and Territories covered by the jurisdiction of each Circuit Court of Appeals and wherever reference is made to decisions of the Circuit Court of Appeals, the particular Circuit is indicated. So-called "creative writing" is conspicuously absent. This book seems to be the result of painstaking, methodical, mechanical research and analysis and required no great amount of imagination or originality. But it is, nevertheless, an extremely valuable item for the shelf of the lawyer, teacher, executive, union officer or government labor official.

Mr. Eby has, in effect, prepared a very elaborate annotation of the National Labor Relations Act. Instead of grouping the annotations according to the chronological sequence of the sections of the Act, the cases have been collected in outline form according to topics and subtopics. The use of only important cases and the avoidance of detailed discussion of Board decisions has reduced needless repetition to a minimum. Mr. Eby's own words best describe the construction of his book:

> "Every important case decided by the courts, since the Act was held constitutional in 1937, has been analyzed and classified

> under appropriate headings and sub-headings. Further, in order to assure accuracy and impartiality, the exact language of the court as it bears upon the point for which the case is cited, is set forth in quotations. Finally, in order to present a well-rounded perspective of the progress and present satus of labor law under the Act, each of the fourteen chapters is prefaced with background material, relevant sections of the Act, the general policy of the Board as enunciated in its decisions, and a summary."[1]

The breakdown into topics and sub-topics and the organization of material under the appropriate headings is very skillful and thorough. The use of the outline form enables the reader to find quickly the most important judicial authorities and, in fact, the very words of the courts which relate to such subjects as Status of Strikers, Reinstatement, Back Pay, Appropriate Bargaining Unit, Collective Bargaining, Jurisdiction, Procedure, Company Unions, Employer's Right of Free Speech and the like, all neatly arranged according to suitable headings under such topics. Wherever a case stands for more than one proposition or includes matter bearing on more than one of the topics or sub-topics chosen by Mr. Eby in his arrangement of his outline, that case and the pertinent quotation is listed under each topic to which it relates. Thus, the important features of every case are presented at the point where the researcher desires to find the authority bearing on his problem. The analysis of these multi-faceted cases is keen and complete—almost prismatic in effect.

There is one fault of omission. Often the same cases with different quotations therefrom are used many times to support many different points of law. This repeated use of the same cases is, of course, quite natural and proper, as one case may contain statements bearing on several subjects. However, many of these statements were not necessary to the decision of the particular case and should, therefore, be given no greater dignity than dicta. It would have been well to indicate clearly, so far as possible, whether each of the many quotations is or is not dicta.

Mr. Eby has refrained from inserting his own opinions or theories. The law is presented impartially and objectively and the reader is allowed to draw his own conclusions. Extraordinary objectivity is attained through the extensive use of quotations. There is nothing here on which to base a comment on any of Mr. Eby's personal views on any labor question. Mr. Eby is a trained observer of labor's legal problems and his personal opinions might be a valuable contribution to labor jurisprudence. But he was wise to decide that they would be out of

[1] Preface, p. xvii.

place in a book of this nature. Private theories are desirable in their place but they would only open the door to confusion and impair the usefulness of a book designed as an impersonal tool for the labor law worker.

In a sense this book may be compared to a stout brick barn—unpretentious, utilitarian rather than beautiful, the creation of a skilled worker rather than an architectural genius, but substantial, valuable, and admirably suited to efficiently accomplish its purpose. As a digest of the judicial status of the most important statutory regulation of employer-employee relationships, it adequately fills a long-felt need of those who work with labor law.

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The Army and the Law, Second Edition. By Garrard Glenn. New York: Columbia University Press. 1943. Pp. viii, 203. $2.75.

Military Justice for the Field Soldier. By Lt. Col. Frederick Bernays Wiener. Washington, D. C.: The Infantry Journal, Inc. 1943. Pp. xiii, 122. $1.00.

Military Justice for the Field Soldier, by Lt. Col. Frederick Bernays Wiener of the Judge Advocate General's Department, is said by the author to have been written to meet a need which actual experience in the field has shown to exist. "Notwithstanding the complaints of field soldiers, who urge that lawyers should be provided for the tiresome and time-consuming details as trial judge advocate, defense counsel, and members of courts-martial—just as medicos are on hand to administer CC pills and to give inoculations—the Army is going right ahead to discipline itself, just as it has for over a century and a half. Lawyers are not specially provided, short of the staff judge advocate and possibly though not usually the law member. Just as the only cure for dandelions is 'Learn to love 'em,' so the field soldier's only remedy for this state of affairs is to reconcile himself to getting quite a number of details in various legal capacities before the end of duration-plus-six-months."[1]

Colonel Wiener undertakes to help the field soldier, particularly the commissioned officer, to meet this problem. He gives him a detailed set of directions as to what to do if he is called upon to investigate or prepare charges, serve as a member of a court-martial, act as defense counsel, or perform any other function relating to the administration of military justice in courts-martial.

[1] Introduction, p. xi.

As a supplement to the *Manual for Courts-Martial,* the official book of court-martial law and procedure, *Military Justice for the Field Soldier* should prove itself invaluable to the commissioned officer. It is written in non-technical language, and is easily understood whether or not the reader has had legal training. Due to the author's endeavor to present his thoughts in an easily understood manner, the language is often a little too informal to be in good taste,[2] but its meaning is always plain.

So long as the army continues to call upon its field soldiers to perform legal functions, every commissioned officer would do well to read *Military Justice for the Field Soldier.* Perhaps he would then feel a little less bewildered when he is called upon to act as trial judge advocate or defense counsel in the court-martial proceedings. The book was not written for the civil lawyer, and has nothing to offer him other than a slight insight into the workings of military justice.

The Army and the Law is a very different book. Originally written in 1918 by Garrard Glenn, the book has been revised and enlarged by A. Arthur Schiller. "This book deals with the army only in its relation to the common law which governs the general public, and with the soldier only in so far as his activities are, in point of law, of interest to non-military persons. It is an endeavor simply to assemble the principles of law which impose duties upon the civilian, citizen, or enemy quite as much as they give him rights which the army must observe."[3] Chapters dealing with the constitutional aspects of the maintenance of an army, military law and military courts, the army's right of self-regulation, the army in its relations with the enemy, military occupation, and the relation of soldier to civilian, appear in successive order.

The approach to these subjects is scholarly. Footnotes and citations of cases abound. In contrast to *Military Justice for the Field Soldier,* the language is highly formal. This book is not to be read casually or rapidly, it being what is commonly called "a legal treatise," with all that phrase implies. Written by a scholar and revised by a scholar for the purpose of being read by scholars, the book is an important contribution to the bibliography of military law.

Other than the chapters dealing with the relation of soldier to civilian, *The Army and the Law* contains little of value to the practicing attorney who desires only to find answers to legal questions which might arise in his office.

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[2] See, for example, page 9, where specifications and data on charge sheets are referred to as "vital statistics" and "dope."

[3] Preface, p. v.

Walter Clark, Fighting Judge. By Aubrey Lee Brooks. University of North Carolina Press. 1943. Pp. x, 278. $3.00.

This is an interesting work, of excellent style except when dealing with controversial or highly personal matters, and then far from accurate and objective.

I will give one or two illustrations. The celebrated cases of *Gattis* (and Clark) *v. Kilgo* and Duke occupied the courts nearly seven years and were tried before various tribunals. The Trustees of Trinity College decided against Clark; the Supreme Court of four Republican judges did likewise, and so did Judge Fred Moore and finally Justices Connor and Brown. These trials are headlined as the "Kilgo-Gattis Travesty Trials."

In every contest Clark's enemies are not only wrong but wickedly so. When Simmons defeated Clark for the Senate, the political machine clicked. Locke Craig was made Governor by a political machine. Judges Will Allen and George Rountree were cogs in the political wheel. Furches and Douglas were offensive judges; Kilgo, afterwards Bishop in the Methodist Church, was an emotional evangelist. Duke, the trust magnate, was so bad that no adjectives could describe him. He is spoken of as "this same Duke." "This same Duke" did this; "this same Duke" did that; language of the fiery stump orator, of course, and not of the historian.

Nevertheless the book is altogether necessary; Judge Clark's side should be presented. We have full-length biographies of Page, Tompkins, Kilgo, Aycock, and Duke. Why not also a life of their doughty antagonist, The Fighting Judge? Well, here it is: a boy Colonel in Lee's army, editor, scrapper, duelist, breaker of images, radical of the radicals, at-outs with the past, critical of the Constitution—a device to enable plutocrats such as Washington and Hamilton to hold their ill-gotten gains—advocating a national convention to tear the thing to pieces and put the Declaration of Independence in its place. Such was Walter Clark, Tar Heel paradox, living, according to his biographer, at the crisis of the conflict between Oromasdes and Arimanes, and a champion of human rights.

But to make good his point, was the author always discreet? Was it wise to leave the impression that Clark, for the asking, might have been President of our University or of Wake Forest or of Trinity, and that he turned down the Governorship to attack the Democratic Party, the Supreme Court, the two Senators, the Trustees of Trinity College, and to charge that Daniels and Poe sold Clark down the river for selfish purposes?

Was it not unwise to declare that Clark never rode on a free pass,

whereas until February 28, 1891, every judge rode on a pass? In the biography, at page 90, an incident is cited from *It's a Far Cry,* but only a portion of the story is quoted. The Laws of 1891, Chapter 193, show that free passes were at that time abolished and that judges were allowed compensation for traveling expenses. Judge Clark (who together with the other four judges of the Supreme Court, and indeed all the judges had such passes) assisted in the passage of the legislation referred to.

Again, to add to the hero's fame, it is said that he was honored with an A.M. degree by our University in 1870. This is an error. It is also stated that Clark sacrificed a lucrative practice in 1885 to fill a vacant judgeship. This is an error. A special judgeship was created, a position eagerly sought by the profession. The salary was not $2,250, as stated, but $2,500 and traveling expenses over all railroads. In 1885, $2,500 and free transportation was a windfall to our greatest lawyers, such as Howard, Merrimon, Brown and others. To an editor-lawyer, as young Clark then was, busy with overflowed Roanoke bottoms and with the operation and editing of a one-horse newspaper, the judgeship must have come as a God-send.

Another instance of boosting the hero may be mentioned, a challenge to fight a duel issued by Clark to one Pugh, a nonentity, a ne'er-do-well, as may be seen from Des Farges v. Pugh, 93 N. C. 31. The whole thing indeed was a roaring farce and duelling unlawful.

Is it not strange that the dynamic Clark should have boosted himself by publishing a fabricated letter from the Coves of Yancey? This document was so poorly composed, with its alien phrases, "sure pop," and the like, that Joe Caldwell of the *Charlotte Observer* declares that Clark had written the letter to himself. Fifty years ago the Coves of Yancey incident was great sport!

Sometimes Judge Clark's strange, radical notions had a ludicrous conclusion. On a certain occasion, in the Judges' chambers, Clark was expounding his pet idea that no court had the right to nullify an act of the legislature. Justice Allen interposed. "Suppose," said Allen in his soft, unanswerable manner, "Suppose, Judge Clark, the Legislature in violation of the Constitution should cut our salaries from $5,000 to $500. Should that law stand." "You suppose an impossibility, Judge Allen," retorted Clark.

In the 1890's the American Tobacco Company was organized; and for about fifteen years crushed the life out of the tobacco farmers, but was finally dissolved by valiant President Theodore Roosevelt, aided by Daniels, Webster, Beasley, Cy Watson and others—patriots highly esteemed by the people. But when Judge Clark descended from the bench, pulled off his judicial robes, and entered into red hot politics,

advising the Governor as to legal matters soon to arise, also furnishing material with which to impeach his brother judges, he seemed to have exceeded the speed limit! Many of the editors referred to him as trailing the judicial ermine in the dust. This attack delighted Clark; it advertised him and stirred up the folks.

It is said that Chief Justice Taft was jesting when he declared that he would not trust the Constitution with Clark over-night. This may have been a jest, but a remark of U. S. Chief Justice White along the same line was no jest. The story is told by Murray Allen. Allen applied to White for a Writ of Error to the Supreme Court of North Carolina in a damage suit against a railroad. "Who wrote the opinion?" queried the Chief Justice. "Judge Clark," Allen replied. "Hand me your Writ," said White. And he signed, certifying error, without reading the record.

The climax of the Fighting Judge came in 1912 when he ran for the Senate. That he would be swept in on the Wilson tidal wave of liberalism, he had little doubt. Without resigning the judgeship he took the stump, delivered fifty-five political speeches and freely circulated his pamphlets, including "The Dream of John Ball." According to his biographer, he was the most popular man in the state. The realization of his loftiest ambition was at hand. The people, from the sand dunes of Hatteras to the Coves of Yancey, would flock to the polls and honor their champion. Election day came; the ballots were counted. Judge Clark did not carry a single county, the Coves of Yancey actually going back on him. He was defeated in Halifax, his native county, and in Wake, his home county. He received only ten percent of the total vote in the state.

Why did Clark lose out in his first and only real election contest? His biographer lays the blame on the defection of Daniels' paper and Poe's paper, an excuse which is not only naïve but belittles Clark. Daniels took sides between Democrats only when absolutely necessary. Poe's paper is agricultural and not political. No. Judge Clark was defeated for deeper reasons. Clark on the bench, the people admired; but Clark, the radical reformer, the forerunner of a political revolution which has since well nigh destroyed constitutional government, was mistrusted.

Walter McKenzie Clark was of the best North Carolina stock and received a fair education, attending the local schools and the University for one year. Though his father was well-to-do, war broke up the lad's educational scheme but did not quench his ambition. Napoleon soon became his idol and fame his goal. Early in life he dropped McKenzie from his name, the word smacking of Scotch aristocracy, and became plain Walter Clark. To his mother he wrote that he

intended to throw everything into the scales—soul and head—and be a man. He was true to his resolution. He became an excellent young soldier and later a pungent, cryptic, powerful writer, though no speaker. The grand passion of the orator, the rolling periods, the deep, soul-stirring voice, that matchless something called "action" by Demosthenes, all these accessories Clark lacked. In private conversation he was soft spoken, affable and natural; but on his feet he was exactly the opposite: affected, unnatural, his shoulders squared, his voice militaristic, imperative, though not loud. As a public speaker he labored and seemed to bite his words.

Clark, the trial judge, was unsurpassed, prompt, well posted, courteous, though with criminals as rough as nails. Severity indeed soon became his stock in trade. Jim Miller, fashionable owner of a gambling house, came before Clark for trial and was represented by the great law firm which had really put Clark on the bench. Dilatory tactics were adopted; motion to quash, motion to continue. Both motions were overruled; the great lawyers silenced, Miller convicted, put in jail and fined two thousand dollars.

Still another case came before Clark in Raleigh. The degenerate son of a noble family, charged with embezzlement, was represented by leaders of the bar. The plea was insanity. The jury found the issue "Yes—insane." Clark set the verdict aside, called in a second jury, intimated that if the lawyers filed a petition to remove on the ground that the judge was biased he would put them in jail, and then tried the case over again. The young man was convicted and served on the roads for months.

Judge Clark was fond of this little story. He was on his way to a mountain county court and left word at the desk for a call at six in the morning. The hour arrived and so did a little innocent Negro boy to kindle a fire. "Ain't you a drummer, Mister?" queried the little fellow through the darkness. "Yes," said the Judge, "I am a drummer." "What does you drum for?" asked the little boy. "For the Penitentiary," growled the Judge. And the little Negro fled.

After about five years on the Superior Court bench Clark was appointed to the highest court by the governor. Here he remained the balance of his life. During this long service he was the acknowledged champion of labor and of women and children. He was also recognized as the leading authority on administrative or adjective law, the law of pleading, practice and the like. In regard to substantive law—body of the common law—he was not so strong. Truth to relate, Clark detested the law—"that codeless myriad of precedent, that wilderness of single instances"—and said of it that it was the only profession that had never made any progress. Coke and Blackstone, fathers of English

and American jurisprudence, Clark held in derision and utter contempt. Perhaps had he paid a little more attention to Blackstone and a little less to "The Dream of John Ball" he might have ranked with Ruffin and Pearson.

Undoubtedly Aubrey Brooks has won his case and made good his point. Walter Clark was a fighting judge, but what of it? Is fighting an attribute of the model judge? We had thought of a judge as a detached, impartial personage, learned, just and merciful.

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