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# Book Reviews

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# BOOK REVIEWS

**The North Carolina Law of Evidence.** By Dale F. Stansbury. Charlottesville: The Michie Company. 1946. Pp. xix, 778.

A detailed review of the contents of this book would be neither appropriate nor profitable. There may be in it a few minor flaws. There may be places where the reviewer would have adopted a different approach. But, without a doubt, the book as a whole is excellent and will serve extraordinarily well the purpose for which it is intended.

The author himself has indicated that purpose when he said, in his Preface, "the effort has been to produce a working tool for lawyers and judges rather than an exercising device for classroom gymnastics." The book is clearly destined to save lawyers much time and judges many errors. It is compact and convenient; but, at the same time, the footnote material has been so handled that meaningless generalities are practically non-existent. Further, while extended commentaries on what the law ought to be are not offered, the author has not hesitated to point out, with clarity if with brevity, vagaries which need to be corrected and the inconsistencies which are inevitable in a volume of case law as large as that involved in the field of evidence.

Despite the limited purpose which the author set himself to serve, the book is most useful to a teacher interested in North Carolina evidence rules and to students similarly interested.

No North Carolina lawyer who expects to try cases can afford to be without this book. It is so far superior to anything heretofore available that there exists no real basis for comparison.

The volume contains no place for pocket supplements. However, it is certainly to be hoped that periodic supplements will be issued, so that the high value of the book will not be gradually dissipated.

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**Labor and the Law.** By Charles O. Gregory. New York: W. W. Norton & Company, Inc. 1946. Pp. 467. $5.00.

This is a book about labor, and about many of the laws and cases affecting labor, written both for those who have to deal with labor problems, and for the general reader who wants to understand them. In 435 pages of text, in fourteen chapters, Mr. Gregory sketches a substantial amount of history (and without some of this history no one can have a sound understanding of labor problems or labor law); he dis-

cusses the labor injunction and its abuse, the Norris-LaGuardia Act, strikes and boycotts, the closed shop, picketing and the Thornhill doctrine, the "yellow dog contract," the Sherman and Clayton Acts, the National Labor Relations Act and the NLRB, collective bargaining arbitration, decisions of the courts in labor cases, and related matters, legal, political and economic. In a field where there are numerous self-appointed authorities, columnists, editorial writers, radio commentators and congressmen, it is good to have an occasional book by a clear and conscientious writer who is also a student and teacher, and who has had actual experience dealing with "the ancient problem of capital and labor now [traveling] under a new name—the conflict between management and organized unions" (p. 13).

In his Preface Mr. Gregory refers to the development of "truly modern labor relations law in the United States" in the decade before the war, and of the interruption of this development by war-time controls. He then says:

> "Too much water has gone over the dam for us to go back to the prewar days and pick up where we left off. In many ways the labor laws of the last decade have become unsuited for the next. The break that the war has made in the normal development has afforded an occasion for us to recapitulate our achievements in the labor laws of the past years and to ponder our mistakes with a view to profiting from them both in the future, for we realize that the ensuing years will bring new laws in this field."

I have said that no one can understand labor matters today without some knowledge of the history of labor law, and Mr. Gregory has perhaps given all the space that he could afford to give to the English struggle between capital and labor from the time of the Black Death in the fourteenth century, and the many Acts of Parliament and decisions of the English courts. Those who wish to read further concerning the five and a half centuries of labor law in England, and to see how violence and extremism on one side or the other were answered in the same way, will find references in Mr. Gregory's Table of Authorities Cited (p. 453), and particularly in the Historical Introduction of Landis & Manoff, Cases on Labor Law, there referred to.

There is no simple solution to the legal problems of management and labor. Raymond Moley recently advised those whom he referred to as the "red-faced men," who were urging complete repeal of most of the labor legislation of the past fifteen years, to quiet down and to face the facts of modern industrial society. A prerequisite of any solution, however, is some understanding by each side of the problems of the other. They can get some of this needed understanding by reading Mr. Gregory's book, particularly the earlier historical chapters, those on the labor injunction, on collective agreements and arbitration, and on the

National Labor Relations Act, and the National Labor Relations Board and the courts.

It is not feasible here to make much detailed comment on particular chapters of this book. In the excellent chapter on The New Deal and the NLRA, I looked for some analysis of what I have suspected is a weak spot in the administration of the NLRB, that is, the excessive power that the review staff at one time seemed to exercise. Here an excess of zeal for one side could have vast influence on the conclusions of the Board. This type of administrative defect, which is often unknown to the parties or their attorneys, is not, however, characteristic of the NLRB alone. It has certainly existed and exists in other agencies, and in many courts, and is a factor which is hard to identify or control.

Worthy of particular commendation is the chapter on functioning of collective agreements and arbitration. In discussing the place of arbitration Mr. Gregory touches on one of the most troublesome questions an arbitrator has to face—the ascertainment of some rule of law, or a practice or custom, which, in the absence of a contract provision, can be taken as a standard or guide. Too often one of the parties to an arbitration assumes that there is some sound but unformulated rule or standard of which the arbitrator must be aware, and he is then left to find it within himself or elsewhere if he can. Mr. Gregory makes a comment in this connection:

> "Real arbitration would properly seem to imply the disposition of a dispute in accordance with some standard—possibly a law, a trade practice or a provision in a contract—which the parties to the dispute concede to exist, although they cannot agree upon what it means or how it is to be applied in the particular case" (p. 402).

Mr. Gregory is critical of arbitration "to break collective bargaining deadlocks," and he feels that it is often absurd to let arbitrators "draw upon their personal notions of economic values." In reply it may be said that arbitrators act by consent of the parties and if the parties are willing to accept a decision in such cases, it represents a technique that works. Wage arbitrations, for example, are frequent, and they have this important merit—they enable the parties to settle for the time being their differences. In fact, although in theory a true arbitration perhaps involves only "the interpretation and application of an already achieved collective agreement in the disposition of specific grievances raised under that agreement" (p. 403), awards are constantly being made that do not come within that definition. The arbitrators are settling differences between labor and management, and building up a body of arbitration "law" often quite comparable in its development to the growth of the common law through judicial decision.

Mr. Gregory has enriched his book by summaries of many impor-

tant cases. As a rule these abstracts are carefully and vividly set down, and discussion of the issues involved is clear and persuasive. Certainly, however, it will be an unusual non-professional reader who will stay with Mr. Gregory for the full thirty-three pages on the *Apex* and *Hutcheson* cases (pp. 255-288).

There is one phase of Mr. Gregory's approach that should be mentioned. It is illustrated in the following passages:

"A referee of a boxing match applies a set of rules to the fighters; but he would never think of making up such rules as he goes along or even of introducing into his decisions long-felt personal notions of what he believes is fair in the ring. Referees of sporting contests accept and conform to a set of legislated rules. They would be out of work very quickly if they did otherwise. Courts are expected traditionally to behave in much the same fashion. The rules they enforce have been long established and are well recognized. If they are to be changed, it seems best that the legislatures should make the changes . . ." (p. 91).

"Our courts should be occupied in construing and applying the law, without undertaking to make it as well" (p. 334).

This over-simplification of the judicial function has somewhat impaired for me the value of the brilliant chapter on the constitutional area of the economic conflict—picketing as free speech. A certain amount of judicial law making was and is characteristic of the common-law system. Typical examples are in the common-law justifications in Torts. This has given a flexibility and adaptibility that perhaps cannot be attained in any other way. The success of such a system depends on the quality of the judiciary, and there is no doubt that our society has sometimes paid a high price for the benefits that result from the powers our judges exercise. Mr. Gregory's discussion of the Thornhill doctrine and its complications is necessarily colored by his concept of the judicial function.

Although he is inclined to make a good deal of the argument that peaceful picketing is something more than free speech, that certainly is to be conceded, but no consequences necessarily follow from the fact alone. If the "something more" is the mere physical presence of a single Casper Milquetoast carrying a truthful and non-libelous sign, it seems impossible to deny the validity of the Constitutional argument that protects this picketing as free speech. If, instead of one Casper Milquetoast, the picketing is by a dozen Capone hoodlums, or if the peaceful picket of one Milquetoast is "enmeshed with a history of violence," there are other cases, and call for other decisions.

I hope Mr. Gregory's book will be widely read. A knowledge and understanding of its contents by members of Congress could be worth

a good deal to the whole nation, and if leaders of industry and labor would study it, they might find there several million dollars' worth of industrial peace.

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**Municipalities and the Law in Action.** Edited by Charles S. Rhyne. Washington: National Institute of Municipal Law Officers. 1946. Pp. 565. $10.00.

The 1946 edition of *Municipalities and the Law in Action* is a cross-section view of the wheels and cogs of municipal government machines all over the land, 1945 model. Written by practicing city attorneys out of the stuff of their daily experience and published annually by the National Institute of Municipal Law Officers, this volume brings to the practitioner or student of municipal laws a sequence of action shots which lay bare the working of modern municipal governmental machinery, showing the areas of stress and strain, the areas of conflict and co-operation with state and federal governmental agencies, and the areas of distinct municipal achievement in 1945.

1945 was a year of shifting emphases on city government problems. The task of providing for invading armies of servicemen on leave from nearby Army and Navy installations became the task of finding homes and jobs for returning veterans. Post-war planning, attacked by some as a time-consuming luxury in the war years, suddenly became a here-and-now proposition. The worries involved in purchasing fire engines under priority rules were replaced by the difficulties encountered in buying surplus war property from the government and in buying from manufacturers frantically reconverting to a peacetime production harassed by strikes, materials shortages and the threat of inflation.

Most of the subjects discussed were old acquaintances: city-federal relations; city-state relations; annexation of unwilling territory outside cities; taxation and revenues; municipal revenue from federally owned property; municipal tort liability; zoning and planning; municipally owned utilities; sewage disposal; and municipal bond issues. Some of them recognized new trends and methods and situations born of the war or developing in the last few years: federal claims to tide or submerged lands; right of municipal and public utility employees to strike; municipal law enforcement and strikes, and city liability for riot damage; cities and labor union contracts; public housing; municipally owned

parking lots; surplus property and cities; airport legal problems; and a proposed bill of rights for cities in a triple form of government.

*City-Federal Relations*—The traditional concept of the American system of government as being dual in nature, with federal and state governments and their respective spheres of sovereignty, is giving way to the notion of trinity—with federal, state and city governments becoming increasingly equal partners, say these whose life work is in municipal government. Bearing witness to their philosophy are the growing number of federal laws extending federal aid not only to the states or to the cities through the states, but directly to individual cities themselves. The Federal Aid Highway Act of 1944, which Congress brought into effect by resolution in October, 1945, was one, and "since this was the first time in the 29-year history of the Federal Aid Highway Program that cities have been able to participate, it was necessary that each state adopt legislation, and that city charters be revised, in order for cities to share in the money." Cities were also affected by 1945 federal laws concerning pollution of streams, federal aid to public works planning, federal aid to hospitals and public health centers, federal housing programs, federal aid to recreation and to school lunch programs.

*City-State Relations*—Chief questions of interest involving city-state relationship concerned: the sharing of state taxes with cities, with the municipal law officers evidently feeling that there is a trend toward a level of distribution fairer to the cities; urban representation in state legislatures, with municipal efforts in Minnesota failing to succeed in obtaining fairer representation, and with the situation in other states remaining about the same; home rule, with progress being made in Georgia and Missouri by constitutional amendments; and state-wide retirement systems, with nine states adding their names in 1945 to the list of states with such system providing for municipal as well as state employees, bringing the total to 22.

*Taxation and Revenue*—The year brought new sources of tax revenues to some cities, took some old sources away from others. Maryland extended to Baltimore blanket authority to tax anything the state could tax; Washington cities have moved into the admissions tax field abandoned by the state; many states increased the proportion of the cities' share of state taxes. But Maryland, Oregon and Tennessee have entered the field of licensing a number of businesses formerly licensed by cities.

All through the year cities found themselves in continued sound financial condition thanks to increased assessed values, availability of new revenues, and decreased indebtedness.

*Municipal Revenue from Federally Owned Property*—Although federal payments in lieu of taxes ease part of the burden arising from loss

of municipal revenues where extensive federally owned property is located within a municipality, many federal properties are subject to no such "in lieu" payment arrangement. But the chief contention of the cities is against the frequent situations where federal property is leased or sold under contract of purchase, with title technically remaining in the United States, and with private individuals or corporations escaping taxation under the cloak of governmental immunity to taxes.

*Municipal Tort Liability*—The trend is toward stricter accountability of cities to individuals for personal injuries sustained as a result of municipal negligence. The cases discussed here show that judges and juries are increasingly sympathetic to the claims of injured persons against municipalities, despite the ancient protective cloak of governmental immunity still theoretically freeing municipal governing bodies from tort responsibility except where they act in a proprietary or corporate capacity. Best defense against such suits is listed as a showing of contributory negligence, carefully made by the city attorney.

*Zoning and Planning*—Municipal zoning and planing talk in 1945 reflected the impact of the atomic bomb on the thinking of men. The City of Tomorrow is an underground maze, or a narrow and long affair built along a superhighway, or it is much like the conventional city of today—depending on which expert you choose. The more radical prophesies grow, of course, out of thinking in terms of possible atomic war. But city planners are also looking toward the day when atomic energy will light the cities and drive the wheels of industry.

Other scientific developments were becoming factors in city zoning and planning last year. In Des Moines the question of permitting television towers in residential areas was answered in the affirmative. Airport zoning was a subject widely discussed and studied, now that many military airports are being turned over to community control.

War-time variances of zoning regulations, which were permitted to meet emergency conditions, have been widely continued, particularly with respect to housing. The danger involved in allowing continuance of non-conforming uses to the point that they become vested interests have generally yielded to the pressures of material, housing, business and industrial space shortages. On the other hand, strict interpretation of zoning ordinances has added to the difficulties of new construction in many places.

*Municipal Bond Issues*—Since 1939, when President Roosevelt proposed that future issues of municipal bonds should be made subject to the income tax (which proposal the Congress ignored), the Treasury Department has sought to achieve the objective by assessing bondholders of the Port of New York Authority and of the Tri-Borough Bridge Authority. Municipal finance officers, recognizing that elimination of

income tax exemption of state and municipal bonds will increase interest rates, have been watchfully interested in the progress of the New York cases through the Tax Court, which held that these Authorities are political subdivisions of the states and that therefore it was not necessary to decide the constitutional question; through the Circuit Court of Appeals, which affirmed the decision; and to the Supreme Court, which denied the Government its application for a writ of *certiorari.*

"It is of interest to give a moment to the reasoning of the Tax Court. The Court held that these authorities are political subdivisions because of their nature, i.e., they are politically organized and are public services. They are also exempt because of the nature of their activities which were held to be governmental in character. After decision of these cases, there remains a question as to what are governmental activities as distinguished from proprietary activities. It is to be hoped that it will ultimately be held that a public agency which is doing anything that the state believes necessary in the public interest is a political subdivision."

*Financing of Sewage Disposal Facilities*—"It has been truthfully stated that water is generally pure until it is defiled by man. As population increases . . . polluted streams become a serious health menace. More than fifty years ago this problem presented itself in the East, and about twenty-five years ago in the Middle West. It has now spread to the Northwest, the Pacific Coast, and the South . . . Health Departments . . . are now more insistent than ever that stream pollution . . . be abated."

The hitch is that nobody wants to pay for what everybody admits benefits everybody. At Spokane, for example, the State Health Department has ordered the city to quit dumping its sewage into the Spokane River, with the city's voters saying "No" three times to the proposition that four million dollars in bonds be issued to finance a sewage disposal system. The question is, "How should it be financed?"

Methods of financing initial construction, varying as state laws vary, are listed: general bond issues which are in the nature of a mortgage on all the city's property, and usually require special election because of statutory debt limitations; revenue bond issues, payable out of the earnings of the system; Sanitary District or Drainage District method, where a public corporation separate from the city handles the problem; and the special assessment method, based on taxing property in proportion to the benefits received from the system. These are the old ways; but a call is sounded for Congress to come in with grants-in-aid, on the theory that "elimination of stream pollution is clearly a subject upon which Congress should act."

*Right of Municipal and Public Utility Employees to Strike*—"The

question of unionism is not at issue. City attorneys throughout the country are of the opinion that municipal employees have the right to organize, unless expressly prohibited by statutes. . . . These public employees' unions have the right to present the grievances of the public employees to the duly constituted authorities and may bring public pressure to bear in attempting to press home their demands for bettering wages and labor conditions."

But municipal law officers do not believe public employees have the right to *strike,* or to picket government buildings, "peacefully" or otherwise. Their attitude is shown in the following statements: "A general strike of city employees would be a blow at the very heart of free government . . . if a number of such employees engage in work-stoppage, then all the elements are present of a conspiracy against government . . . their right to strike is merely the individual right of work-stoppage—nothing more. . . . Any attempt to curtail necessary public services by a general strike would go beyond the right of mere work-stoppage and would enter the field of anarchy. Its very object and result would be the complete breakdown of a city's governmental function."

*Public Housing*—The stake of municipal government in the federal housing programs is larger than an interest in solving immediate and acute housing shortages. It is also wrapped up in the hopes of city planners to seize present opportunities for slum clearance, with resulting improvement in public welfare and health conditions. Listed by the municipal law officers as chief problems in achieving these goals were problems of federal-local cooperation; payments in lieu of taxes; tax exemption of public housing projects; local territorial jurisdiction, where projects are federally built and owned.

*Municipally Owned Public Parking Lots*—Under a law passed by the Kansas legislature in 1941, Kansas cities of the first class were authorized to condemn and improve property for public parking purposes, in commercial, light industrial and industrial districts. Kansas City has gone into public parking on a large scale, and the report of experience there claims resulting decrease in traffic congestion and traffic accidents, because of elimination of much on-street parking. Costing (when fully completed) about $400,000, in ten years their six parking lots will be paid for by special assessments, and by general taxes to retire the bonds issued, with double-decking possible if later traffic increases make it necessary.

*Airport Legal Problems*—Municipal ownership of airports began to increase throughout the country with the end of 1945 and the war. The resulting legal problems are many, including airport zoning, with seventeen states passing zoning laws last year governing construction and location of structures within airport hazard areas; taxation, with an

Indiana decision holding that income derived by a city from operation of its airport is subject to state income tax, because such operations were proprietary in character; and in the acquisition of airports, with most courts upholding the constitutionality of acts permitting municipal ownership—but in South Carolina the Supreme Court held otherwise, holding unconstitutional an act which created an aeronautics commission in Williamsburg County with power to borrow on the county's obligation money to build an airport. There the court held that an airport is not a "public building," and that the expenditure of funds for an airport is not for an "ordinary purpose," as those phrases were used in the South Carolina constitution in connection with municipal debt.

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