



UNC
SCHOOL OF LAW

NORTH CAROLINA LAW REVIEW

Volume 45 | Number 2

Article 5

2-1-1967

Book Reviews

North Carolina Law Review

Follow this and additional works at: <http://scholarship.law.unc.edu/nclr>



Part of the [Law Commons](#)

Recommended Citation

North Carolina Law Review, *Book Reviews*, 45 N.C. L. REV. 572 (1967).

Available at: <http://scholarship.law.unc.edu/nclr/vol45/iss2/5>

This Book Review is brought to you for free and open access by Carolina Law Scholarship Repository. It has been accepted for inclusion in North Carolina Law Review by an authorized administrator of Carolina Law Scholarship Repository. For more information, please contact law_repository@unc.edu.

BOOK REVIEWS

Legal Restraints on Racial Discrimination in Employment. By Michael I. Sovern. New York: The Twentieth Century Fund. 1966. Pp. 213. \$6.00.

James Ballard, a 23 year old Air Force veteran, applied for the apprenticeship program jointly managed by Local 28, Sheet Metal Workers International and the major employer association in New York City. He was denied admission because of his race: *i.e.*, because none of the 3,000 members in the all-white local would act as his sponsor. To whom should he turned for redress? To the New York Commission for Human Rights, that enforces the state fair employment law? To the Federal Opportunities Commission, created by the Civil Rights Act of 1964? To the Secretary of Labor, who administers the anti-discrimination clauses of all government contracts? To the National Labor Relations Board, that insists that labor unions cease and desist from racial discriminatory practices? To the Office of Education, that finances with federal funds the school-room aspects of most apprenticeship programs? Or to the Courts, that frequently assert jurisdiction when unions are alleged to have abused the power given them by federal or state laws? Each one of these agencies has advantages, each one has built-in statutory limitations. James Ballard eschewed them all, and went directly to the Attorney General of New York for help.

A complaint was filed under the New York anti-discrimination law; and after some two years of negotiation, conciliation, fact finding, and litigation, the union agreed to operate the apprenticeship program without regard to race, and by objective standards. This benefited James Ballard not one bit, but ultimately fourteen Negro and Puerto Rican youths scored high enough on the battery of aptitude and other tests to gain admission into the trade. (The journeyman rate was \$6.15 per hour plus fringe benefits).

This story, as told by Professor Sovern of Columbia University, illustrates the old truism that it is easier for a Negro to gain admission to West Point or Annapolis than into many of the skilled trades and crafts. It also illustrates that after two hundred and fifty years of slavery and another seventy-five of neglect, the governments—

both federal and state—have finally become sufficiently aroused to do something about the problem of racial discrimination in employment.

Author Michael Sovern can only point out the basic problems—the Negro unemployment rate is twice that of the white; the Negro, when he finds a job, finds a poor one; the situation has grown worse, instead of better in the past ten years. He can, and does, however, lead the reader through the maze of duplicating and overlapping jurisdictions of the agencies recently created to remedy this problem.

The beginning came in 1941 when President Roosevelt, threatened with a demonstration march on Washington, opened up the newly created jobs in defense industries to Negroes. His executive order of that year required that all defense contractors agree in advance to hire, promote, train, and assign jobs without regard to race, creed, color or national origin. Subsequently, a Fair Employment Practices Committee (financed by general appropriations to the Executive Office of the President) was established to enforce the contractual pledges, through the devices of mediation, education and publicity. The committee had no other powers of enforcement and operated by way of behind-the-scenes negotiated settlements. However, it incurred the ire of certain southern senators, and in 1944 Congress adopted an amendment by Senator Richard Russell which denied federal funds to agencies established by executive order unless the Congress specifically appropriated money for the agency. Congress refused to appropriate any funds for the FEPC after the fiscal year 1945, and the first federal experiment in using the powers to contract as a lever for fair employment practices came to an end.

In the Korean War, President Truman reinstated a strengthened executive order requiring fair employment practices by government contractors; and Presidents Eisenhower, Kennedy and Johnson each gave increasing jurisdiction, powers, and sanctions to their FEPC counter-parts. The employers of approximately twenty million workers have contracted with the government not only to refrain from discrimination, but also to take affirmative action to ensure that applicants are employed and that employees are treated during employment, without regard to their race, creed, color, or national origin. Professor Sovern has a chapter examining the complexities of the executive orders. He discusses the scope of their application, the exemptions for those employers otherwise covered,

the compliance and enforcement techniques. Illustrations and an assessment lend color and make for exciting reading.

Shortly before the Roosevelt FEPC expired, New York enacted the first state law prohibiting racial discrimination by employers, by unions, and by employment agencies. Some thirty-three other states and over fifty municipalities have followed the New York pattern. In essence, a commission is established to receive complaints and make investigations. If "probable cause" is found, the commission attempts to "conciliate," and if this fails, it may hold public hearings and thereafter issue a cease and desist order enforceable in the courts.

Professor Sovern discusses the exceptions and the exemptions in the typical state law; the lack of sanctions to effectuate the orders when issued; and the inability or general refusal to initiate a case unless and until a disappointed job applicant chooses to lodge a formal complaint. He also discusses the human frailties—the commission timidity, the protracted and time-consuming conciliation efforts, the soft settlements—and the use of part-time commissioners who in turn rely on an inadequate and underpaid professional staff. He concludes, and rightly, that if the job is to be done, the state commissioners must be given more adequate tools.

The Roosevelt FEPC resulted from a threatened march on Washington in 1941. In 1963 there was a Washington March for Freedom and Jobs, with literally hundreds of thousands participating. Congress reacted with Title VII of the Civil Rights Act of 1964. This title is the first congressional ban on discrimination in employment—because of race, color, religion, sex or national origin. Author Sovern takes the reader through the legislative history and textual qualifications in the law. He describes the exemptions (primarily those employers with fewer than twenty-five employees plus state and local governments); the exceptions (Indian tribes, private membership clubs); the justifications (when religion, sex or national origin is a bona fide occupational qualification) the limitations ("quota hiring" prohibited, "aptitude tests" permitted); and the weaknesses (the commission has power to conciliate but not to compel). Professor Sovern also discusses the relationships of the Equal Employment Opportunities Commission with the Attorney General (who is given the power to initiate suits when there is a "pattern or practice" of employment discrimination); with the Secretary of

Labor (whose authority over the Federal Contractor Program is unaffected by anything in Title VII); with the agencies charged with the administration of state anti-discrimination laws (jurisdiction is shared); and the relevance of Title VI (which precludes discrimination on state projects financed with federal funds such as road, hospital, school and airport construction).

Finally, Professor Sovern discusses the judicial remedies against union discrimination under the Railway Labor Act, and the extremely thorny problems of the as yet unfolding National Labor Relations Board jurisdiction to prevent union discrimination against those whom it represents.

Although the basic problem of racial discrimination in employment is surrounded by emotional overtones, the existing solutions are precise, technical, even legalistic. The book has these same attributes and is destined to become the indispensable desk reference for the corporate house counsel, the trade union practitioner, the public administrator, and the growing host of those who must familiarize themselves with the legal restraints on racial discrimination in employment.

DANIEL H. POLLITT

PROFESSOR OF LAW
UNIVERSITY OF NORTH CAROLINA

The Air Code of the U.S.S.R. By Denis A. Cooper. Charlottesville, Virginia: The Michie Company. 1966. Pp. xx, 298. \$15.00.

Dr. Denis A. Cooper, one of the pioneer students of Soviet Aviation Law in the United States, has produced a book which needed to be published. Until now, there has not been a reliable translation of the Soviet Union's current Air Code, although it has been in effect for almost five years. His book, an annotated translation into English of the Soviet Air Code, contains an introductory commentary which gives an overall view of all of the important features of the Code and its place in the Soviet system. It deals with the Soviet views on air sovereignty as they affect flight within U.S.S.R. airspace, the definition of aircraft, and the creation and maintenance of airports. It shows how construction and maintenance of airports are problems of public and private law alike, and

discusses the relationship between the State and private individuals with regard thereto. The book also investigates problems concerning ownership of airports as well as servitudes, legal limitations, etc., upon adjacent owners.

The author also discusses the role of the aircraft commander, a title unknown to American law, his relationship to his crew, passengers, and his legal powers insofar as the aircraft itself and its cargo are concerned. Also discussed are the legal problems involved in forced and voluntary landings. The author further devotes his attention to the distinctions made by the Code between "airports" and "aerodromes," and has noteworthy comments on Soviet and international law concerning air transportation and claims for damages to aircraft, persons, baggage, and cargo.

In his translation of the official text of the Air Code published in the *Journal of the Supreme Soviet of the U.S.S.R.*, Dr. Cooper utilized the vocabulary of contemporary English aviation terminology and has footnoted his translation with explanations which show the Code's relation to the legal system of the U.S.S.R., to international conventions and agreements, and to counterpart areas of American law, civil aviation regulations, and aviation industry practices.

Dr. Cooper combines the unique qualifications for the production of this volume. He is a man fluent in Russian as well as in six other languages; he is a man with experience in aeronautics regulation, having been on detail as a lawyer to the Office of General Counsel of the Federal Aviation Agency while a United States Air Force officer, and has written and lectured extensively on aviation law; and he is a man of broad legal background in Anglo-American and continental law. He has law degrees from the University of Chernovitsy (U.S.S.R.) and from The George Washington University; he is a member of the bar of the Commonwealth of Virginia; he was formerly a member of the bar in Rumania where the Russian legal system was applicable in part; and he served for many years as a Staff Judge Advocate in the United States Air Force.

The book will be of interest not only to airlines and government agencies, both United States and foreign, involved in international aviation, but also to scholars of Soviet and international law, since this is the first and only work on the subject available in a language

other than Russian. For this, we owe Dr. Cooper a debt of gratitude.

PAUL G. DEMBLING

DEPUTY GENERAL COUNSEL

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION