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Book Reviews

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Book Reviews

PUBLIC CONTROL OF LABOR RELATIONS. By D. O. Bowman. New York: The Macmillan Co. 1942. Pp. xi, 504.

The broad scope of the title of this work is limited by the sub-title: "A Study of the National Labor Relations Board." It is unfortunate that the broad title was used, thereby tending to accentuate the practice in many discussions to regard the National Labor Relations Act as embodying all national policy with respect to labor relations, and so adding strength to the argument that the act is one-sided. While the author, in the chapter on Labor Relations and Public Policy, does intimate that many of the suggestions for additional legislation on this subject should be enacted as new legislation and not as amendments to the N. L. R. A., he nowhere gives us an adequate study of the other federal labor laws as a background for such new legislation. It is important always to emphasize the fact that the National Labor Relations Board was created for the sole purposes of protecting the right of the employees to select their own bargaining representatives and to compel the employers to bargain with those representatives. If the practice of the employers to bargain collectively with the unions of their employees ever becomes as well established here as it is in many other countries, the N. L. R. B. will be practically without function. If it is to be given other functions, it ought to be clearly recognized that its purpose is being changed and the changes should be made only after a consideration of the bearing of all other federal laws on the subject of labor relations.

As a study of the operation of the Board, this book is excellent. Though it does not slight the legal problems involved in the creation and operation of the board, the concern mainly is with the actual functioning of the board itself, including a great deal of material as to the personalities of the board members, and their economic views, and of the clashing interests of the different labor unions, which cannot be obtained from a mere study of the records, and which throws much light upon the development of the Board's activities.

Any abstract of the contents of the book which gave an adequate impression of the scope of the author's research would unduly prolong this review. The book begins with the background of court decisions and federal legislation which led to the adoption of the N. L. R. A., discusses the controversy over its constitutionality, and then more elaborately studies the activities of the Board with respect both to the prosecution of unfair practice charges, and the determination of representatives. With respect to the former, the conclusion is that the Board has proceeded with great deliberation to avoid the objections that had been made to other administrative agencies, in fact so much so, that the most serious charge that can be made against it is the delay in deciding cases. In discussion of this issue, the author is much more concerned with the success of the administrative process in general, and

with meeting the objections of the unions, than with the need for proper determination of the rights of the parties involved in any particular case. It is undoubtedly true that some compromise adjustment has to be made between these conflicting interests, but in criticizing the board for failing to make more prompt decisions and thereby disappointing the unions, we must not forget to set off against these objections, the desirability of not only doing full justice to the parties in each proceeding, both employer and employees, but also of giving to those parties the assurance that their claims have been fully and fairly heard. In this discussion and elsewhere, the author draws a contrast between the legalistic approach to the problems and the administrative, or realistic approach. Probably he is verbally accurate in using the term "legalistic" to refer to a narrow, technical construction of the language of the act and the powers of the Board, but, if so, it would have been well to call attention to the fact that courts are not confined to that method, but frequently exercise a wide discretion in the construction and application of a statute. It seems to be implied that we are remitted to a choice between a strict construction of the statute to restrict the powers of the Board as much as possible, and a realistic construction, to give those powers as broad a scope as possible. A judge or a lawyer would approach the problem with a determination of ascertaining as nearly as possible what powers Congress intended to confer, and, if there was no indication that Congress had any intent with respect to the specific question raised, then what is the most reasonable construction to give to the Act in order to carry out most effectively its general purposes.

In connection with the discussion of the selection of a representative, there is a detailed study of the contentions of the A. F. of L. and the C. I. O. The author points out that the conflict between these two is not, as often stated, the conflict between craft and industrial unionism, since both national organizations have locals of both kinds, rather he finds that, except as it is one of personalities, the real controversy is between the "voluntarism" of the A. F. L. and the "opportunism" of the C. I. O. His discussion does not make the meaning of these terms very clear to the reviewer. In considering the record of the Board in this controversy, he reaches the same conclusion as almost all other impartial students, that there is no support for the claim of the A. F. L. that the Board has unduly favored the C. I. O. He also gives a detailed story of the controversy within the Board concerning "run-off" elections, but has no new solution to offer for a problem that so far has proved to be insoluble to the satisfaction of the membership of the Board, or the unions involved.

The book is well worth the careful reading of everyone who has an interest in the problem of labor relations. If the ethics of book reviewing requires that some criticisms be made, two suggestions may be advanced. In the discussion of the decisions affecting the Board, the author almost invariably contents himself with a summary of, or quotation from, the opinion. Even when discussing the problem of the effect of the relations on interstate commerce to give the Board jurisdiction, there is no statement of the facts to which the language of the court was to be

applied. In the chapter on policies, there is a summary of the several state labor relations laws. In speaking of the Minnesota law, the author says that it departs from the generally accepted principle that the functions of decision and conciliation should be kept separate. He does not notice that in the Minnesota law, the enforcement of the provisions against unfair practices are left entirely to the courts in suits for injunction or criminal prosecution. The Labor Conciliator has no function of decision except in the matter of selecting representatives for collective bargaining. It is doubtful whether the Conciliator who decided the bitterly contested issue as to right to represent the truck drivers in favor of the A. F. L. could thereafter have achieved much success as conciliator in a case involving the C. I. O. He resigned before the question was put to a practical test. It is significant that the last legislature in its laws imposing some restrictions on the unions and on jurisdictional disputes, committed the administrative enforcement of those provisions to referees to be appointed *ad hoc* by the Governor.

University of Minnesota Law School

H. L. McCLINTOCK

PHOTOGRAPHIC EVIDENCE. By Charles C. Scott. Kansas City: Vernon Law Book Co., 1942. Pp. xxxii, 922.

This book should be owned by every trial lawyer and by every identification expert.

It is a monumental work, molded from the white heat of experience.

Photographic Evidence deals interestingly with an important subject about which most trial lawyers are not scientifically informed. Only occasionally is a book produced which warrants its being accepted as an authority. This is one of those books!

The photographic art is an excellent tool with which to show facts but, through ignorance or design, many misleading photographs are introduced into evidence.

How can the trial lawyer protect his own photographs from a just attack? How can he lay the proper foundation to make his photographs admissible? How can he attack incorrect photographs presented by the opposition? These are practical questions. Too often the trial lawyer neither knows the answers nor where to obtain the desired information.

Photographic Evidence authoritatively answers these questions and a multitude of other usual and unusual questions about photography. The author, Charles C. Scott, is a lawyer who has made an intensive study of photography and the law pertaining to the admissibility of photographs. He has recognized that most trial lawyers know little about photography, yet it is a subject about which they should know much if they want to keep up with the times.

The book containing 900 pages, is divided into two parts: Part I deals with the preparation of photographic evidence; Part II with the law concerning the presentation of photographic evidence.

In Part I the lawyer is told how a photograph should be made to represent accurately the object it purports to portray. More than that, it explains how incorrect photographs are made, how to detect them, and how to expose them. It is the duty of the trial lawyer to be able to vouch for his own photographs and to be able to attack confusing, misleading or fake photographs presented by the opposition. He can do this only if he has a basic knowledge of the subject.

If the trial lawyer is too busy to master Part I, it is all the more important that he have Part II as a reference work. It contains a thorough discussion of the law pertaining to the admissibility and presentation of photographs in court, and quotes practically every decision, both State and Federal, relative to the subject.

Parts I and II combined provide the most useful and informative book yet written on photographic evidence. And it is something new under the sun. Its author maintains that it is a first; that it is the first book discussing cases from both the legal and photographic standpoint.

A feature of the book that should appeal to the lawyer is the exceptionally well made photographic illustrations. In depicting scenes of accidents the author has in many instances shown a photograph which correctly portrays a scene, alongside of which he exhibits another photograph, incorrectly made, of the same scene. The differences are frequently astounding. A different type of lens, a different type of negative, different lighting conditions, different exposure, different processing, or the camera placed in a different location account for the different results. In addition to these dual illustrations, Mr. Scott tells the "why" of various results obtained in photographing the same scene or object. Another helpful feature are the cross-examination questions designed to expose ignorance or duplicity.

A brief recital of some of the subjects ably discussed and well illustrated in this book will give you an idea of the broad field covered. Part I includes basic principles of photography; photographic apparatus; traffic accident scenes; damaged vehicles; skid marks; pavement defects; legal portraits; finger prints; firearms; disrupted documents; and medicolegal photographs. Part II discusses basic legal rules and the law concerning admissibility of evidence respecting photographs of persons, places and things; finger prints; firearms; disrupted documents; x-ray pictures; jury instructions; and appeal; with legal citations on every phase of the subject.

The book concludes with a copious glossary of photographic terms, table of cases, and index.

One emerges from a study of this book with a profound respect for the author and for the book he has produced.

There is a high ideal exemplified throughout this book. It is the ideal of presenting the truth and exposing fraud.

Examiner and Photographer of Questioned Documents
Los Angeles, California

CLARK SELLERS