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## Westin: The Anatomy of a Constitutional Law Case

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## BOOK REVIEWS

*The Anatomy of a Constitutional Law Case.* By ALAN F. WESTIN. New York: Macmillan Company, 1958. Pp. viii, 183. Paperbound, \$1.60.

Often the *cause célèbre* in American constitutional law as reported in the United States Reports and as edited in a case book is something quite out of context. The facts, the issues, and the law are there, but a reading of the opinion five or fifty years after its pronouncement without an understanding of the economic, political, and emotional setting in which the decision was rendered militates against a fuller understanding of the constitutional processes involved.

Professor Westin of Cornell University in *The Anatomy of a Constitutional Law Case* successfully places one of the important cases of our time in its proper context. This book is a documented history of one constitutional law case, *Youngstown Sheet & Tube Co. v. Sawyer*<sup>1</sup> (The Steel Seizure Decision). Here was presented for the first time "the problem of executive power, unaided by legislative scaffolding, to deal with important non-military problems of domestic concern particularly those assuming the proportions of an internal emergency."<sup>2</sup>

The decision itself occupies 131 pages of the United States Reports. It is a six to three holding, with the opinion delivered by Justice Black, with five separate concurring opinions, and with a dissent written by Chief Justice Vinson in which Justices Reed and Minton joined. Questions of separation of powers, presidential prerogative, and residual and aggregate powers of the President came to the fore after the President, through his Secretary of Commerce, seized the steel mills in the face of a threatened shutdown of the entire industry. Public opinion and the steel mills were arrayed against the government and the union. "Intransigent public impotence was pitted against intransigent public power."<sup>3</sup> Politics played an important role in keeping the issues alive inasmuch as Congress was in session and could have enacted legislation affirming or denying the Executive's right to seize. Such action by Congress would have negated any power of the President to act in this twilight zone. Congress chose not to act. The Supreme Court rendered its decision less than two months after initial proceedings were brought to restrain the Secretary's action. It can readily be seen that the decision with its diverse opinions, its important issues, its tremendous interplay of economic forces, and its sense of urgency and importance offers an excellent contemporary decision for dissection.

This relatively short work is designed to have the reader feel that he is a participant in the case as it unfolds so that he is working with and is a part of the multitudinous processes. Once the ultimate decision has been reached, Professor Westin has finished his task. He has little interest in the case retrospectively. To convey the feeling of participation initially he begins with a description of the national mood with its numerous discontents brought on by

<sup>1</sup> 343 U.S. 579 (1952).

<sup>2</sup> Kauper, *The Steel Seizure Case*, 51 *Harv. L. Rev.* 141, 142 (1952).

<sup>3</sup> Freund, *The Supreme Court*, 1951 Term, 66 *Harv. L. Rev.* 89 (1952).

the Korean situation, by price and wage controls, by strikes, and by dissensions between the President and the Congress. An article from a leading newspaper covers the facts, statistics, and economics of the participants as of the date the strike is announced. An excerpt from the *Memoirs* of Harry Truman along with his Seizure Speech of April 8th, 1952, explains the President's position. The speech of Clarence Randall of Inland Steel explains the position of the adversary.

The author next gives each provision of the Constitution that may have a bearing on the issues. He also, in this section, summarizes the reasons against and for judicial review. Judicial restraint in economic matters, the "political questions" doctrine, the theory of lack of power to enjoin discriminatory acts of the President, or the possibility of the Court's identifying the seizure as a military or foreign move could, he believes, furnish justification for the Court's denying judicial review. His theories favoring judicial review are that the Court might hold that the jurisdictional division between legislative and executive should be upheld, that further additions to the Executive should not accrue, and that citizens' liberties from arbitrary control should not be curtailed.

He then proceeds to a description of the proceedings in the United States District Court on the application of the steel companies for a temporary restraining order. His explanations of judicial matters are designedly elementary since the book is written primarily to give those interested, particularly students, a simplified picture of the processes which result in the ultimate decision. For example he says: "Motions . . . were heard in the Federal District Court for the District of Columbia. The District Courts (84 in the various States, 1 for the District of Columbia, and 3 in the Territories) have from 1 to 18 judges assigned to them and are tribunals where most cases proceeding through the federal judicial channel will first be heard." We are here given a biographical sketch of the judge deciding the suit as well as selections from the discourses between judge and attorneys during oral argument. The author is at his best here, since counsel's position and the judge's role in the ultimate decision can more readily be understood by a reading of the questions asked and answers given. Excerpts from the judge's opinion denying the temporary restraining order follow. Congressional attitudes are then graphically illustrated with the arguments and maneuvering which resulted at about this same time from the President's speech to Congress informing it of the seizure and expressing a willingness to abide by such congressional policy as should be formulated.

Proceedings in the United States District Court for an injunction as distinguished from the prior proceedings for a temporary restraining order follow. Here again the colloquies between counsel and judge well illustrate the role of oral argument in the constitutional process. The government response to the court's question as to whether the Executive has unlimited power in an emergency pin-points the fear of unbridled power in the President. The answer of the government, that the ballot box and impeachment are limitations on the Executive's power and that the courts cannot review whether the President's action is an emergency, plagued the government throughout the balance of the case even though more than one attempt was made to modify the answer. In succession come excerpts from Judge Pine's opinion, selections from oral arguments in and the opinion of the Circuit Court of Appeals, maneuvers

for certiorari before the Supreme Court, the table of contents of the briefs presented to the High Court, and a discussion of inherent powers.

The author explains next the atmosphere, the time allotted, the habits and customs of the Court and individual justices, the questioning and other interesting details concerning oral argument before the Supreme Court. Excerpts from oral argument and questioning by the justices follow. After this comes a section on the Court's work after oral argument, how the voting takes place, who writes the opinions and the basis for his selection, how and when the Court's opinions are announced, and other homely details of the Court's actions from the time oral argument ends until the decision is announced.

Biographical sketches of each Supreme Court justice together with statements as to each judge's degree of liberality or conservativeness in civil liberty, business regulation, and labor cases follow. The author is guilty here of the rather common error of failing to explain his definitions of "liberal" and "conservative." The biographical technique is effective to a degree in helping the reader understand the position of the various justices much in the style of a movie of twenty years ago called *Thirteen Men* in which a factual situation was portrayed, certain facets of the defendant's life were given, and then certain facets from the lives of each of twelve jurors. The jury's verdict was readily understandable.

Then come the shortened opinions of the various justices. A calendar of events follows the decision. The calendar includes the strike that took place after the Court's order to return the plants to their owners and the events preceding eventual settlement. President Truman's comments, the editor's comments, and several questions for discussion conclude the book.

"Five justices of the Supreme Court were in thorough agreement in demolishing the dangerous doctrine of inherent powers in the President."<sup>4</sup> "[T]he opinion bears all the earmarks of hasty improvisation, being unquestionably contradicted by a long record of presidential pioneering in territory eventually occupied by Congress."<sup>5</sup> The above are typical comments on the decision reached. Professor Westin has exercised admirable restraint in presenting impartially the salient features of the case and in confining his commentary to factual matter and to conjunctive matter necessary to give the reader a smooth flowing picture. The editor restricts his comments on the decision to features which set the case apart, such as the rapidity with which it was decided and the alacrity with which the Executive complied. This is in keeping with the book's primary interest being in the processes leading to the decision rather than an analysis of the decision itself. The author stated that his purposes were to present "how political and social issues are shaped into legal controversies in our system, how a case moves through administrative and judicial channels on its way to the Supreme Court, how the tactics of litigating parties affect the formulation of constitutional principles, how the actions of the political parties mold the controversy as it progresses, and by what criteria and techniques Supreme Court justices resolve issues presented to them." That he has to a considerable degree accomplished his purposes cannot be denied. Student and teacher will have a better understanding of the constitutional processes after reading this well written work.

Charles Warren's somewhat formalized narrative approach to some of the

<sup>4</sup> Richberg, *The Steel Seizure Cases*, 38 Va. L. Rev. 713, 720 (1952).

<sup>5</sup> Corwin & Koenig, *The Presidency Today* 41 (1956).

older Supreme Court decisions is of immeasurable value in furnishing the historical background important to a fuller understanding of these cases.<sup>6</sup> Alan Westin has broadened and modernized the base in this factual and objective approach to the results reached in a single Supreme Court decision.

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<sup>6</sup> Warren, *The Supreme Court in the United States* (2d ed., 1922).

*Cases on the Law of Trusts.* By GEORGE GLEASON BOGERT. 3d ed. Brooklyn: Foundation Press, Inc., 1958. Pp. 983. \$10.50.

Twenty years ago the first edition of this casebook was published. Its format was regular. But the second edition in 1950 added a new feature; viz., a number of introductory questions at the beginning of each section. The present edition has retained this feature and also (I hope) started a new trend by not being as large as the second edition.

Forty-four new cases (some recent, some older) have been added and many recent decisions have been briefly discussed in the footnotes.

Among other new cases are *In re Wacht's Will*<sup>1</sup> involving a corporate co-trustee associated with individual co-trustees, who sought to resign; *Ray v. Tucson Medical Center*,<sup>2</sup> which held a charitable hospital is liable for the torts of its servants from which injury proximately results to a third person, whether stranger or patient, and whether the patient is a paying or non-paying patient; *Avery v. Bender*,<sup>3</sup> in which a living trust instrument provided that it might be amended but not revoked by the settlors or the survivor of them. They purported to amend the trust by changing the beneficiaries. A beneficiary thus excluded claimed that the exercise of the power to amend was in substance a revocation and so was unauthorized; *In re Loree's Trust Estate*<sup>4</sup> involved a trustee who stipulated for two per cent compensation. For years the trustee received two per cent upon the income so the court refused to permit the trustee to include the *corpus* in figuring its compensation; *In re Mershon's Estate*,<sup>5</sup> on Records and Accounting, the court said, "It is the affirmative duty of competent beneficiaries, upon receiving notice of the filing of an account, to make diligent inquiry concerning the fiduciary's conduct and management of the affairs of the estate. All beneficiaries are chargeable not only with such information as was known to them at the time of the audit but also with what they could have discovered by exercising reasonable diligence"; *Mosser v. Darrow*,<sup>6</sup> involving the trustee's duty of loyalty. In this case the trustee was not guilty of bad faith and as a result of his administration, large profits accrued to the estate. "Nevertheless, the court now holds that respondent (trustee) must be surcharged \$43,000.00 solely because two of the trust's employees profited to that extent from trading in trust securities with his knowledge," said Mr. Justice Black, dissenting; *Swon v. Huddleston*,<sup>7</sup> said that with refer-

<sup>1</sup> 285 App. Div. 402, 137 N.Y.S. 2d 876 (1955).

<sup>2</sup> 72 Ariz. 22, 230 P. 2d 220 (1951).

<sup>3</sup> 119 Vt. 313, 126 A. 2d 99 (1956).

<sup>4</sup> 24 N.J. Super. 604, 95 A. 2d 435 (1953).

<sup>5</sup> 364 Pa. 549, 73 A. 2d 686 (1950).

<sup>6</sup> 341 U.S. 267 (1951).

<sup>7</sup> 282 S.W. 2d 18, 26 (1955).