

CLYDE SUMMERS AND THE EARLY YALE YEARS

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I.

Who ever heard of dedicating a casebook to the senior author of a rival book? Two explanations are possible. In this case both are true. The rival casebook is no real competition;¹ but its senior author is Mr. Labor Law. The dedication in the tenth edition of the leading casebook reads: "To Clyde W. Summers. Exemplary Scholar, Teacher, and Colleague Whose Probing, Farsighted, Constructive and Compassionate Writings Provide a Model for All in the Field of Labor Law."² And that too is true.

Clyde and I came to Yale together in the Fall of 1956. I had just finished a clerkship and was, more or less, starting out. Clyde was a distinguished visiting professor and, during the course of the year, accepted the law faculty's offer of tenure. That was a happy day for Yale.

What a wonderful time it was then in New Haven. Not only were we all young, but half the faculty of the Law School had just been "called" (as Gene Rostow, its dean, liked to put it in his anglophilic way) and a truly interesting experiment in legal education was about to be inaugurated. I am thinking about the Divisional Program. Labor Law was to be one of ten divisions that the school presented that year to its students and the world of legal education.

First a word about that Divisional Program; then about the Labor Law Division and Clyde Summers.

II.

The Divisional Program was initiated in the 1956-57 academic year and, if I may be permitted to paraphrase and interpolate from contemporaneous documents, it might well be described as follows:

During their fourth and fifth terms, each student was *required* to

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¹ C. SUMMERS, H. WELLINGTON & A. HYDE, *LABOR LAW* (3d. 1982), is a very slow seller.

² A. COX, D. BOK & R. GORMAN, *LABOR LAW NIX* (10th ed. 1986).

elect a Divisional program, carrying twelve units of credit (generally six each term) and requiring her to undertake intensive individual study in a basic field of law.

The faculty did not think of the program as one of postgraduate professional specialization, nor were its educational goals those of most college major requirements. Its purpose was to give each student, as part of her general education in law, the opportunity for sustained experience in individual research. It was meant to provide that one sixth of a student's academic life be carried out through methods other than those of conventional classroom instruction: namely, through supervised reading, research, and legal writing, in a setting of small group inquiry. Each student was required to complete a major research paper, comparable in scope to a law journal comment; read widely in the literature of a major branch of law; participate in at least three or four small discussion seminars on problems germane to the themes of her program of reading and research; and to be examined in all phases of her work.

To assist the student in acquiring background and perspective for her research and writing, small advanced classes were provided in a number of broadly defined areas of the curriculum.

In addition to Divisional seminars, regular group meetings of students working in the same or related areas were often held during the fifth term to discuss and criticize each student's major research paper which was circulated in draft in advance. Each research paper was also reviewed and criticized at several stages of its development by the faculty member under whose supervision it was written.

Each Divisional Program, moreover, required other written memoranda from students, the investigation of assigned problems, individual conferences, and often additional seminars, lectures, and special classes. There were, in the beginning at least, comprehensive examinations—sometimes written, sometimes oral—of a student's work in the program.

And it was the faculties' policy to encourage the fullest use of students' written work by publication where appropriate.

III.

Because the program locked faculty members into set teaching patterns, imposed extraordinary responsibility for student research and writing on the faculty and because of inevitable free-rider problems, the faculty was much too willing, under student pressure against all requirements, to allow the program slowly to wither away.

How sad, for during its time it was splendid; and the Labor Law division, because of Clyde, was a stand out. The other divisions were: Commercial Transactions, Corporate Management and Finance, Family Transactions, International Law, Law and the Behavioral Sciences, Procedure and Advocacy, Property, Public Control of Business, and Public Law.

IV.

In the 1959-60 Yale Law School Bulletin, Clyde and I described our division as follows:³

General scope. A study of private law-making process of collective bargaining and problems of administration of collective agreements; government and sponsorship and control of collective bargaining; regulation of unions; the individual employment relation; subsidiary rights rising out of the employment relations, including protection against industrial accidents, disability, unemployment, and old age.

Prerequisites. Labor Law; Administrative Process (to be taken at latest during the fourth term).

That year we offered the following four seminars⁴:

Government of Labor Unions. Mr. Summers and Mr. Wellington. 2 units.

A seminar emphasizing the status of individuals within the collective system. The rights of the individual under a collective agreement, individual grievances, rights of individuals within unions, legal control of internal union affairs.

Labor Relations. Mr. Summers and Mr. Wellington. 2 units.

The problems of collective bargaining and the administration of collective agreements, including legal limits on the content of the collective agreement, the legal enforcement of agreements, and the arbitration process in adjustment of grievances.

Public Control of Labor's Economic Power. Mr. Summers and Mr. Wellington.

Discussion and criticism of Divisional papers and other selected current problems in labor law and labor relations.

It was quite a business and I was one of Clyde's better students. What a wonderful teacher he was. His understanding of unions and of their internal affairs, of the process of collective bargaining, of labor history and of contemporary American and comparative labor

³ 1959-60 BULLETIN OF THE YALE LAW SCHOOL 43.

⁴ *Id.* at 33, 43.

law were prodigious. Nor did Clyde have any difficulty in communicating: On the average, his students learned as much as any students anywhere have ever learned.

V.

He and I disagreed quite a lot. Generally he was, as I have come to understand, right—or at least more nearly so than I. Never did our disagreements lead to difficulties between us. And, I like to think that they enlivened the many seminars we taught jointly.

Several papers that were written for the Labor Law Division were published in the *Yale Law Journal* or in other law reviews. Clyde worked hard at this and took great pride in his students' achievements. And, of course, they loved him. How could they not? For he was (and I suspect he still is) fair, careful, attentive, concerned and above all uncompromisingly honest.

I was lucky enough to see those qualities at work in another context as well. Clyde and I wrote a casebook together.⁵ And, even as in the seminars we did together where Clyde showed me through example how to teach, in the book project his example made clear to me the process of true scholarship.

VI.

What a scholar Clyde Summers has been! No one has had a firmer grip on a field than he. Nor has anyone been more influential in shaping the way we think about a discipline.

I hope Penn lets him continue to teach. I am sure that I shall continue to learn from his wonderful pen, an instrument that is unaffected by a premature and, I suspect, forced retirement.

Please Clyde, write on.

⁵ C. SUMMERS & H. WELLINGTON, LABOR LAW (1st ed. 1968).