

A SERVICE IN MEMORY OF

LOUIS LOSS

William Nelson Cromwell Professor of Law, Emeritus

June 11, 1914 - December 13, 1997

JAMES BARR AMES COURTROOM, AUSTIN HALL
HARVARD LAW SCHOOL
FRIDAY, JANUARY 16, 1998, 2:30 P.M.

QUINTET IN C MAJOR, Opus 163
F. SCHUBERT (1797-1828)
First Movement

WELCOME AND REMARKS

Robert C. Clark
Dean of the Faculty of Law
Royall Professor of Law

OPENING REFLECTIONS

Rabbi Ben-Zion Gold

REMEMBRANCES

Milton R Kroll
Freedman, Levy, Kroll & Simonds
Washington, D.C.

Detlev Vagts
Bemis Professor of International Law

QUINTET IN C MAJOR, Opus 163
Second Movement

TRIBUTE

Paul Gonson
Solicitor to the Securities and Exchange Commission

REMEMBRANCES

Joel Seligman
Dean and Professor of Law
The University of Arizona College of Law

Margaret R. Loss
LeBoeuf Lamb, Greene & MacRae
New York, New York

CLOSING

Rabbi Ben-Zion Gold
Kaddish

QUINTET IN C MAJOR, Opus 163
Third and Fourth Movements

There will be a reception immediately following the service in the Ropes-Gray Room, Pound Hall, Second Floor.

The members of the Quintet are from the New England Conservatory of Music:

First Violin, John Harrison;
Second Violin, Kelly Barr;
Viola, Margaret Strange;
First Cello, Jennifer Lucht;
Second Cello, Anne Bennett

REMEMBRANCES

ROBERT C. CLARK
Dean of the Faculty of Law
Royall Professor of Law

On behalf of the Harvard Law School, I welcome all of you to this memorial service for Louis Loss, the former William Nelson Cromwell Professor of Law. Thank you all for being here. We are pleased that Margaret Loss, Milton Kroll from Freedman, Levy, Kroll & Simonds, and Paul Gonson, Solicitor to the Securities and Exchange Commission will be speaking today as well as Louis's colleague, Professor Detlev Vagts, and Louis's student, disciple and coeditor, Dean Joel Seligman of the University of Arizona College of Law. You will hear from all of these speakers who knew many aspects of Louis's life. So I shall be brief. I should say at the outset that there will be a reception in the Ropes-Gray Room on the second floor of Pound Hall following the service.

Perhaps as Dean the most important thing that I can say about Louis Loss is that he was, over the 45 years of his association with the Harvard Law School, one of a handful of faculty members who became synonymous with the School. When alumni and others think about Harvard Law School, Louis Loss is among the pantheon of great scholars like Paul Freund, Lon Fuller, Louis Jaffe, Austin Scott, Erwin Griswold and A. James Casner, who, for many, in a particular, long moment in its history, defined the institution. He was one of the constitutive forces who shaped legal education in the post-war period and who had an enduring influence on generations of graduates. Louis told one of his colleagues

some years ago that when he told his children that he worked at the Law School they thought, for some time, that he said that he worked at the Loss School -- L O S S School. The children were younger then. I don't know if he ever tried to disabuse them of this notion, but for many of us it seems not far from the truth.

Louis came to the Harvard Law School in 1952 and was a major force in shaping its development in that period. He taught Corporations and the Regulatory Aspects of Corporate Finance in his first year and added Agency and Securities Regulation in his second year.

Louis, by the way, did not take Agency at Yale. In his book, *Anecdotes of a Securities Lawyer*, he notes that he taught Agency for the first time in the same year that Warren Seavey was teaching it for the last time. "Since Warren Seavey. . . knew everything there was to be known about Agency," Louis wrote, "I simply attended Seavey's section as well as my own and stayed one session behind him."

Louis said that "After I had taught Agency a half-dozen times the Harvard faculty voted to abolish Agency as a separate course." He noted: "I can only hope that the timing was coincidental." Louis wrote that "those of us who had taught Agency under the . . . tutelage of the great master (Seavey) voted for abolition with a tear rather than a cheer." Louis himself, of course, became one of the great teachers of his time, like Seavey, and has inspired countless teachers and practitioners of corporate law and securities regulation.

Louis coined the phrase "securities regulation" and that became the title of his first book, published in 1952. The second edition of the Oxford English Dictionary credits Louis for also coining the word "tippee" -- which, as many of you know, refers to a person who receives an inside tip about a stock and then illegally uses that information to trade. The New York Times reported, a few years ago, on a celebration we held in honor of the publication of the first book. The Times noted that that single volume launched an entire field of study: the law that governs -- or at least should govern -- Wall Street.

That celebration, by the way, was held in the Treasure Room. Many of you will remember what a wonderful event it was. With great poetic justice, the Keeper of the Treasure Room at that time was Bernice Loss, who for so many years served the School wonderfully -- with tremendous talent and great artistic sense -- as the Curator of the Art Collection. Both Louis and Bernice are themselves Harvard Law School treasures. Their partnership contributed so much to the life and spirit of the School. I am so pleased that the renovated Langdell Library has given us the opportunity to display more of the art that Bernice nurtured with such care over the years.

Louis had a great respect for the practice of law -- in the private sector and in government service. For seven years he served as Director of our Program on the Legal Profession, having taken over the reigns from Jim Casner. The Program moved from an event held every two or three years to an annual one. Under Louis's guidance the Program expanded

in the courses offered and the numbers of judges, government lawyers, law school teachers and practitioners attending.

One other contribution of Louis's deserves notice. That is the work he did to put Harvard Law School on the world map. Louis was in great demand in far-flung corners of the globe to give advice on the drafting of securities legislation and he put his mark on the securities laws of many countries. He also had many students from abroad who studied under him here through the LL.M. program. He was a great supporter of the notion that the Harvard Law School has an obligation to share our knowledge and resources with others. In 1962 Louis spent nine weeks teaching in South Africa. He visited India, Israel, Japan and Ethiopia en route.

Louis gave the Turner Memorial Lecture at the University of Tasmania in Australia and the Taylor Lecture at the University of Lagos in Nigeria. And he gave a famous talk on insider trading in Paris. In French. He said that his talk had been translated into French by his friend André Tune, and he was persuaded to deliver the French version. He reported that later, at the reception, his true grasp of French was unfortunately revealed. Louis also lectured over the years in Belgium, China, India, Italy, Mexico, Singapore, Spain and Venezuela. He was held in awe by lawyers and government regulators around the world.

Louis mentions in his book that his former student In-Jaw Lai -- who later became a Vice-Minister of Finance in Taiwan -- sent him a book on securities regulation that In-Jaw Lai had written. Sometime thereafter, a lawyer from Shen Zhen China wrote to him about the problems of stock exchange regulation in China and lamented the fact that there was no book on securities regulation in Chinese. Louis wrote back and told him that there was an excellent book in Chinese, written in Taiwan. Louis thought that this might be the first step in reunification of the two Chinas.

As Davey Herwitz told me, Louis's love for this institution was patent and contagious, and he served it so very well in so many dimensions from Admissions to Appointments, from Library Committee to PIL.

Louis Loss was a teacher's teacher and a scholar's scholar. He was a man of vision who instinctively recognized the interdependency of the world. He knew the importance of sharing -- well -- insider information. He knew securities regulation in its finest detail but he never lost a universal vision. Louis Loss was a great presence at the School, and I am certain that he is a great presence in the minds of the thousands of students he taught and inspired over the years.

RABBI BEN-ZION GOLD

We are here to celebrate the life of Louis Loss. Professor Loss had a long and distinguished career as a legal scholar and teacher. His monumental treatise illuminates the whole area of securities and made him famous throughout the world. His advice was sought by lawyers, corporations and governments.

There are people here who are better suited than I to speak about his rich professional life, but having known Louis Loss for nearly 40 years, I would like to say just a few words about him. Our relationship began when he accepted my invitation to serve as an adviser to Hillel at Harvard. During the late '50s, Jews on the faculty tended to be sensitive about their Jewishness. Not Louis Loss. When I called on him, he received me cordially and accepted my invitation.

Louis Loss was raised in a traditional home. In his childhood, he was observant, but in time, he, like many of his peers, having come under the influence of secularization in higher education, abandoned religious observance. He was an ardent admirer of Harry Wolfson, the renowned historian of philosophy, especially Jewish philosophy, at Harvard. During our last conversation, Louis told me that he felt more comfortable about not being observant when he discovered that Wolfson wasn't either.

In spite of his ambivalence toward religious practice, Professor Loss had retained a fondness for the tradition and an attachment to Jewish causes. For instance, he was instrumental in establishing the program for Israeli studies at Harvard Law School. Among its alumni are Chief Justice Barak and Justice Shamir of the Supreme Court of Israel. In his *Anecdotes of a Securities Lawyer*, a book written during his illness, he describes his visit to Ethiopia and his fascination with the Falashas. I have a feeling that Louis, who was an adult during the Holocaust, took solace from the fact that these African Jews survived living in isolation for nearly 2000 years.

I was particularly moved by the way he dealt with his debilitating illness. Throughout his life he was a dignified person but his true dignity became even more apparent when he refused to capitulate to his sickness. I saw him at the Law School in his wheelchair. There was no self-pity, no bitterness. We spoke about all sorts of social and political issues and of course, he shared with me some of his favorite stories. Louis was a man of great intellectual gifts. He was a man of excellent judgment. A wise man whose affirmation of life in the face of grim illness was awesome. His life will continue to enrich all those who had come to know him.

Now I would like to read a brief excerpt based on the Book of Job 28:1-2, 12:

When a wise man dies, how can he be replaced? There is a source for silver, and a place where gold is refined. Iron is taken from the earth and from stone, copper is smelted. But where can wisdom be found and where is the place of understanding? When a wise man dies, how can he be replaced?

MILTON E KROLL
Freedman, Levy, Kroll & Simond
Washington, D.C

I am honored by the invitation to speak in memory of Louis Loss. We were very close friends and often-times colleagues over a span of fifty-six years, beginning in 1941 when I joined the legal staff of the Securities and Exchange Commission (“SEC”) in Washington where he already was employed.

After leaving that Agency in the early 1950s, we worked together in many contexts and I watched, with awe, his rise to Olympian heights.

There were many beneficiaries of his great gifts: his students, some of whom have told me that they were so taken by his lectures that they often brought friends to hear him, just as we did in my time here to Professor Scott’s classes; next, the working bar who, as I did, practiced in the field where he was the standard-bearer; and the academic community in general.

It is impossible within the limits of time to do more than encapsulate the many things for which he long will be remembered.

However, since I was privileged to participate in some of his work during his professional ascent and knew him so well personally, I want to share with you some of my recollections of the rare qualities he displayed during those joint experiences -- qualities which made him such an uncommon man and outstanding professional.

Of course, his combination of scholarly achievements and lawyer’s skills are taken as a given. But, I also would like to emphasize his qualities as a man that I observed during our experiences.

Above all, Louis Loss was a noted scholar, but not an “ivory-tower” scholar. He was a warm, gifted human being with a strong sense of family and friendship.

Few people have had as important an impact on a field of law. As I am sure you all know, he gave the major field of “Securities Regulation” its name and shaped it as a new and distinct legal specialty through his landmark writings, extensive professional activities and academic pursuits.

Those of us who have practiced in this field are grateful for his writings which have provided us with a bible -- a tradition that we expect Joel Seligman to continue.

I can recall, as I am sure others do, many late night conferences where securities law attorneys were dealing with a perplexing SEC question which closed with “Let’s look it up in Loss” or “What has Lou Loss had to say about this sort of thing?”

In short, the name, Louis Loss, is virtually a synonym for the securities law field. He became a colossus in that area.

I would like to recount some of the things he did along the way that so greatly impressed me.

He often was consulted on difficult SEC problems and I was fortunate to work with him on behalf of my own clients or his. He believed that an academic's perspective and acuity were honed by excursions into practice.

He approached each case with enthusiasm and with a facility for fitting complicated financial products into even more complex statutory schemes where the law so required.

Also, the notable projects and symposiums that fill his résumé provided a stage from which, not only his scholarship, but his skills at working with others, his humor and the warmth he displayed toward them were evident.

At a symposium in Japan, which has securities laws like some of ours and where Lou's *Fundamentals of Securities Regulation* is a best-seller, I observed his ability to conform his thinking to the realities that attend their securities law world and the way he won them over. He is an intellectual hero in the Japanese securities community and among related Japanese academics.

The fellowship that prevailed during our visit and in the correspondence that followed also was reflective of his gift of working with others.

We were treated as royalty there -- or at least as I think royalty is treated. The head of the world-renowned Nomura Financial House had his own noh theatre at which private Kabuki performances were given for visiting dignitaries. A private performance was given for Lou!

Another outstanding example of his people-skills is reflected in his work as reporter for The American Law Institute's *Federal Securities Code*. He was the principal draftsman of this mammoth work of about 1000 pages which was in the making for about ten years. It provided a model for federal legislation codifying the SEC statutes into an integrated whole. This, of course, was a basic Loss concept first emphasized in his 1951 work, *Securities Regulation*.

Although never enacted by Congress, this work of nearly 1000 pages has had a real effect on resolution of securities law questions. It has been cited by courts many times. Professor Herbert Wechsler of Columbia, then director of ALI, described this product as "majestic" -- to me a fitting description of such a masterwork,

Lou's work on the Code also brought into clear relief another of his gifts for which he will be remembered by many of us -- the gift of friendship. I saw it displayed here and on other assignments. The Code was prepared after some years of meetings with a group of experienced consultants and advisors with varied SEC law backgrounds who had strongly held views which they often expressed with adversarial heat.

But Lou had such a facility for dealing with them that they left these projects as his good friends and remained such over the years. This was brought home to me very clearly by

the many concerned inquiries I received from so many of them during Lou's unfortunately long illness and after his passing. There was another trait of Louis Loss for which many will remember him. That was a fine sense of humor. He was a master of the "bon mot" and the Quick Retort, perhaps best illustrated by a conversation he had when he became the William Nelson Cromwell Professor of Law here in 1962.

On that occasion, someone jocularly remarked to him that it might be dangerous to be labeled as a Cromwell in a community such as Cambridge, Mass. which had such a heavy Irish population. Without batting an eyelash, Louis's immediate response was "not when they learn that this Cromwell had a law partner named Sullivan!" For those here who are not lawyers, I point out that Sullivan and Cromwell is a well-known New York law firm.

Well, as an alumnus of this illustrious institution, I am happy that Lou Loss realized the error of his ways and shifted his teaching future here from his alma mater, Yale Law School. He has achieved a place among Harvard Law School's treasures such as "Scott on Trusts" and "Williston on Contracts. Now, "Loss on Securities Regulation" takes its place beside them.

I have no doubt that this man long will be remembered by fellow academics, SEC practitioners and former students. I'm sure that in years to come, securities lawyers faced with difficult questions in the field will continue to close their conferences with: "First, let's look it up in Loss!"

And those of us who knew him as a friend will mourn his passing and think of him always with love and affection.

Finally, I want to salute the members of the Loss family who are here today for the constant support they gave to Lou throughout his career and for the exemplary care they gave him during his illness. His widow, Bernice, who in her own right, as art consultant to the Law School, made it so much more attractive, and his fine children, Margaret and Robert. They all are part of the record of achievements we are talking about today.

Thank you.

From *Anecdotes of a Securities Lawyer*. Boston: Little, Brown and Company, 1995.

I. A Legal-Side Autobiography. Page I.

There must have been a time in my life when I did not have my mind set on being a lawyer. But I don't know when that was. It could not have been much later than 1925, when I reached my eleventh birthday on the same day in June that my oldest sister, Miriam, became 24. Shortly after that she married a Dickinson Law School graduate, Harry Siegel, who was a year or so older than she was. A few months later my father died. With three older sisters (the second and third unmarried) and a brother (the only other male in the house) who was only five years older than I, and no father of my own, I was drawn to this likeable and kind brother-in-law, whom I suppose a pre-adolescent boy

would consider to be middle-aged. So, since Harry was a lawyer, I was going to be a lawyer, too. And, to my great good fortune, it happened.

DETLEV VAGTS

Bemis Professor of International Law

As one watches one's name mysteriously ascend to the top of the faculty seniority list, one becomes ever more aware of how much one is part of an institution with all its history. Although he went to the "other" school, Louis Loss saw himself very much as part of the Harvard Law School as an institution. He identified strongly with colleagues who preceded him. Until just before the end he would bring himself, propel himself, to faculty lunches and presentations so that he could share once again the company of the colleagues with whom he had served so long. He even made the effort to go to those long faculty meetings that active-duty members of the faculty do their best to avoid.

Louis's central academic achievement was, of course, the production of the treatise on securities regulation. In its massive and comprehensive quality it resembled the achievements of his predecessors, Scott and Williston. Although it started as a one-volume work alongside their multi-volume rows, it came abreast of them in size by the second edition and pulled ahead by the third. But it was unique in that it created the field it analyzed and described, since nobody before then had thought of securities law as a field or imagined its structure. Uniquely among them he had the ability to find a colleague with whom he could work on equal terms so that the project could be carried on after him in a manner that transcends the cut-and-paste work of so many successor editions.

A secondary but important part of his life's work was the American Law Institute's project to develop a model securities code. In the ALI he had his predecessors and contemporaries -- Scott, Williston, Seavey, Casner, Braucher. It is demanding work and requires putting one's scholarly individualism in reserve as one struggles to achieve formulations that one finds acceptable while at the same time getting a majority vote for them from a very diverse group of people. In particular, the play of powerful interest groups challenged Louis's ability to pull the draft together but careful balancing and patient persuasion succeeded again and again. That the United States Congress failed to give the force of law to this monumental achievement reflects badly on that body rather than on the drafter.

As a teacher Louis adapted quickly to the requirements of the Harvard Law School even when they were different from those of his alma mater, a smaller and more intimate institution. He could control the largest classroom spaces we had to offer, even the cavernous Langdell North and South Middle rooms. Students appreciated the realism and worldliness he brought with him into the halls of academe -- as well as his capacity for relieving the dryness and complexity of the subject with revealing and amusing anecdotes. They knew that there was nothing unlawful about receiving and using insider tips in that context. It was indeed a chastening experience to have to teach a section of

Corporations alongside such a spellbinder, and I was fortunate to be able to start under a regime in which the administration assigned students to sections regardless of their preferences. Their preference would clearly have been Louis. Looking back at the very first student evaluation from the 1960s, I find the summary lavish in its praise of Loss. It ends by warning that there may be a bit too much securities regulation for the basic Corporations course but concludes: "consider the alternatives." He was generous in his interest in helping younger faculty in solving teaching problems, though he could never, in the nature of things, quite pass along the unique qualities of his teaching.

Louis was unstinting in his efforts on behalf of the faculty, serving patiently for a long term on the appointments committee -- the single committee which then did all of the work now done by the laterals committee, the entry-level committee and the lecturers committee -- and still was able to adjourn each year before the year-end break. The work was all the more extensive then because several of our colleagues went to Washington to take roles in the Kennedy administration while he declined the opportunity to join them as chair of the SEC. He was director of the Program of Instruction for Lawyers, our summer school for practicing attorneys, picking up the task from another professor, A. James Casnet, who also never lost his affinity for the world of practice and handing it on to another of that category, David Herwitz.

While his focus on Harvard was intense, he also knew himself to be part of a broader, even international, community. He was on close terms with his British counterpart, Jim Gower, and would have been saddened by the knowledge that Gower survived him by only a few weeks. Louis took a special interest in South Africa, sharpened by his own experience of discrimination. He became involved at a time when it was mired in the deadlock produced by its policies of apartheid and did what he could to encourage dissidents from that regime and to keep alive the possibility of change. We are glad that he held on long enough for him to see momentous and hope-filled changes in that country, symbolized by transition from De Klerk to Mandela.

In the midst of this whirlwind of academic activity Louis somehow found time for quite a substantial amount of practice. Given his years of litigation for the government and the scarcity of comparable expertise in the civilian sector, this was a natural extension, and he enjoyed hearing the noises of combat and smelling the odor of gunpowder again. There were times when he was offered more work than he could handle. He would then favor his juniors with the opportunity. On one occasion he was asked to work on a case in which the firm that consulted him had been sharply criticized by the Court of Appeals for the unnecessary length and verbosity of its brief. In giving me the chance he smiled and said, "I told them that you would say less than anybody else I could think of." I think I hear him now clearing his throat and saying, "Det, that reminds me . . ." and so I will come to an end. In ending I'll refer to the old Harvard lines, "time like an ever-rolling stream bears all its sons away." It does that, but they leave their contributions for others to build upon.

PAUL GONSON

Solicitor to the Securities and Exchange Commission
Washington, D. C.

One day last month, SEC Chairman Arthur Levitt and I chanced to meet in the hallway of the SEC building on the floor where we both have our offices. He asked, "Did you hear that Louis Loss died?" I replied that I had read the article about him in The New York Times that morning. Chairman Levitt spoke of his admiration for Professor Loss, and we traded Louis Loss stories.

We spoke of Professor Loss's early years on the SEC staff. In those days, as today, the SEC regarded itself as a family. The Chairman wanted everyone at the SEC to know that a revered elder of our family had died.

The next day, we sent a notice of Professor Loss's death to all of our 2,900 employees in Washington and in our field offices around the country. That notice described his many accomplishments as author and scholar, of course, -- who hadn't heard of Louis Loss? -- but it also focused on his fifteen-year career at the SEC.

During our hallway conversation, Chairman Levitt inquired about a service for Professor Loss. I responded that I had just received a news release from Harvard that mentioned that a memorial service would be held at a later date. Chairman Levitt said he wanted to write a letter and hoped that it could be read at that service. I have that letter with me, and I am honored to read it now.

UNITED STATES SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
THE CHAIRMAN

January 16, 1998

Dean Robert Clark
Harvard Law School
Cambridge, Massachusetts 02138

Dear Dean Clark:

Louis Loss was among the most admired individuals ever to serve at the U.S. Securities and Exchange Commission. Through his scholarship, diligence, and comprehensive understanding of the logic within the law, he has become one of the icons of SEC history. His friends at the SEC mourn his loss, honor his memory, and offer their condolences to his family and to his colleagues on the Harvard Law School faculty.

No academic voice has ever had such a persuasive impact on the SEC's work. Thanks to the 60 years he spent developing the law -- first as an attorney at the SEC, and later as a professor at the Harvard Law School -- it is easier for his successors at the SEC to fulfill their primary mission: to protect investors. Through his groundbreaking work in

interpreting rules to keep markets fair and efficient, today's U.S. capital markets enjoy a measure of confidence that have won the admiration of investors around the world.

As he advanced to become the Associate General Counsel of the SEC, he helped establish the meaning of American securities regulation -- clarifying the reasoning within the letter of laws that were, at the time, in their infancy. His treatise on securities law -- now in 11 volumes -- has long been the definitive word on the subject, distinguishing him as a giant of legal scholarship.

It is widely, and rightly, said that Louis Loss was "the intellectual father of securities law" in the United States. He was an enormous force in the creation of the theoretical bedrock that supports today's structure of resilient markets, efficient capital investment, and a productive, wealth-creating economy. He is admired, within the academic world, for his agile intellect and supple reasoning. To his friends at the SEC, he will be remembered as an idealist who championed the very highest standards of public service.

Louis Loss' legacy to the nation -- and to the legal profession -- is not only an admirable body of scholarship. He also leaves a legacy as an influential teacher of a generation of lawyers. They reflect his vision as they work today in law firms; as judges; at the SEC; on Wall Street; as professors in law and business schools; and in other areas of private practice and public service. Thanks to his intellectual leadership and his pragmatic reasoning, the memory of Louis Loss will remain a model of legal scholarship and civic commitment.

Sincerely yours,
Arthur Levitt

V. Codification: A Case Study in Legislative Reform. Pages 244-45, 249.

[The Federal Securities Code]

As a matter of general approach, the Reporter and the advisory groups were guided by five basic policies: (x) achieving an appropriate balance between the conflicting desiderata of certainty and equity; (2) a decent regard for precedent, but with freedom to overrule those cases, including Supreme Court decisions, that were thought to be inconsistent with the brave new world of the Code; (3) the art of the practical, which requires a realization that the best is the enemy of the good; (4) restricting the scope of the Code's reforms to what might loosely be called "lawyers' law," with respect to which Congress might be expected to defer to the expertise of the Institute and those associated with the drafting process, as distinct from basically political questions, such as the traditional disclosure philosophy versus the "efficient capital market theory" or the continuation of retail price maintenance in the sale of investment company shares versus open competition; and (5) the danger of overcodification. Needless to say, all of these policies could serve only as guidelines . . .

It would be a sad state of affairs if after almost a half-century of frequently fortuitous development of a complex field of the law, it were not possible to bring to fruition a decade-long reexamination of the field as a whole by highly qualified experts drawn from the Bench, the practicing Bar, the world of Academia, and the Government itself.

Meanwhile, we must be satisfied with the statement of an academic expert that: “There has never been a piece of unenacted legislation treated with such respect by the courts as has the Federal Securities Code.”

JOEL SELIGMAN

Dean and Professor of Law

The University of Arizona College of Law

A FAREWELL TO LOUIS

With the death of Louis Loss, securities regulation has lost its giant. Louis was to securities regulation what Adolf Berle and Gardner Means were to corporate law: the preeminent scholar, the most original thinker, the standard by which others have been and will be measured.

For those who have studied his treatise, Louis was a scholar of extraordinary organizational ability who possessed a remarkable ability to bring to bear on any legal problem knowledge from a broad statutory and historical context, and who had a particularly charming sense of literary style.

Working with Louis was the highlight of my professional life. In a sense, I was blessed by a prenatal relationship to Louis. My father played in a string quartet with Loss just after World War II. According to Louis, he and a third member of the quartet put up \$100 to buy my father a viola. Occasionally, Louis insisted that my father neither returned the viola nor paid back the \$100. In this case, the sins of the father were visited on the son.

I began work on the treatise well aware that Louis had “invented” the field of securities regulation as an academic discipline. I doubt that there will be anyone who will equal his achievements in the field: preparation of three editions of a multi-volume treatise; Reporter to the American Law Institute Federal Securities Code; drafter of the 1956 Uniform (State) Securities Act; co-author of a Commentary on that Act; and later author of *Fundamentals of Securities Regulation*.

Yet after 13 years of collaboration, what remains striking to me was his personal warmth. My most vivid memory of Louis will always be arriving at his office during our early years working together. Louis had a smile that would light up the room. In those years, invariably I would proudly show him photographs of my then very young children. Louis would share stories. He would recall working at home, often as he remembered it, on the floor with his children. On one occasion, he remembered his daughter Margaret at about three or four years of age, sitting next to him with two pieces of paper. On one, she

scribbled with a crayon. The other piece of paper, she tore into small shreds. Louis asked what the torn pages represented. Margaret regarded him seriously, and stated simply, “Footnotes.” Louis’s love for Bernice and his children was a constant refrain of those wonderful meetings.

At the same time, it is hard to overstate how seriously Louis took his scholarship. Bernice has characterized the treatise as Louis’s “third child.” The phrase was apt. Louis’s treatise has not simply gathered dust on a library shelf. It has, in a real sense, grown as a child grows, with book and author sharing what was a greater than a 50-year dialogue. In all of Louis’s scholarly work, he insisted on rigor and freshness. His last law review article, published by the Harvard Law Review, was a mere 10 pages long. In that instance, Louis’s mastery of a statutory context was a tour de force. He understood the relationship among the provisions of the major Federal securities acts in a way that no one could rival.

Often Louis cast his net wider. In two pages in the treatise, he offered a historical context for short sale regulation which began with the Dutch of three centuries ago, chronologically examined the efforts of Napoleon, the New York Stock Exchange during the Civil War, Bismarck’s Germany, then dipped back to English precedent beginning in 1734, followed by New York in 1813, then concluded with the pivotal role that “bear raiders” played in inspiring the Federal Securities Exchange Act of 1934.

Louis valued word usage. I know he took particular delight when the Oxford English Dictionary recognized him for the invention of the term “tippee,” which in securities law means the recipient of a stock tip.

Louis’s insistence on proper word usage was a constant theme in our correspondence. Early in our collaboration, when Louis believed that I had improperly used a “which” when a “that” would have been appropriate, he forwarded to me several photocopied pages from Fowler’s work on English Usage. Any delusion that I had that I understood the distinction vanished after reading those pages. I recall articulating my frustration to my colleague at the University of Michigan Law School, Professor Al Conard, who, with delight, produced for me a short article that he had published in an alumni publication, “The Wicked Which.” I forwarded the article to Louis, and for the only time in our correspondence, I received no response. I inferred from this that he was not amused. Later he sent me a brief essay entitled, “The Mighty Comma.” In enthusiastic handwriting, he wrote, “A great essay!”

Louis set a high standard. He personally edited each draft of our manuscripts. Only rarely did Louis compromise his scholarly rigor. He allowed me to reassure a near-hysterical research assistant that no citation for *Jarndyce v. Jarndyce* would be necessary since LEXIS did not include the *Collected Works of Charles Dickens*. On the other hand, he declined to translate a lengthy French article title, with the Marie Antoinette-like response, “Let ‘em learn French.”

On the first day we began work on the treatise, I asked Louis what guidance he would offer in terms of a philosophy or approach. He thought for a moment, then simply said,

“Good judgment.” What I took him to mean was that he would start analysis of each problem with an open mind, evaluate its full context, and then try to reach a conclusion. Obviously in the thousands of pages that he had written, there were often clear analytical approaches. But the most important quality one can bring to the drafting of a treatise, besides energy is, quite simply, intellectual humility. By “good judgment” one has to have the ability to see a problem anew, see that its analysis is more complex than earlier perceived, and be able to revise or rewrite, unfettered by the norms of a theory. This allows a treatise to remain vital and not become ossified by work written in the past.

Louis was not present at the creation of the Federal securities laws. He began his work at the Securities and Exchange Commission in 1937, three years after the SEC was established. His presence on the scene so soon after the birth of Federal securities regulation made him a living link to the genesis of this extraordinary agency. Louis appreciated, as few did, the significance of an approach to regulation that was neither based on the control of entry and rates -- such as the former Interstate Commerce Commission -- nor based upon an unquestioning trust in market forces. The full disclosure ideal of the securities regulation model represented a new approach. In a historical sense, it has been one of the most enduring achievements of The New Deal. Louis’s scholarship championed what was once a novel form of regulation. With his death, one of the vital links to the enthusiasm of those who began our Federal securities system during the 1930s is gone.

Louis took great pride in the fact that the treatise and its abridgment, *Fundamentals of Securities Regulation*, were cited in over 1,000 reported cases, including over 50 Supreme Court decisions. Through its weighing of cases, legislative history, agency interpretative materials, and secondary literature, the treatise form has taken on somewhat greater significance in recent years. The veritable onslaught of publications now available, in part through computerized research, has made the treatise more valuable as a guide to an ever-expanding field of material. Louis once wrote of his treatise, “*Securities Regulation*, I like to think, literally organized the field we now call by that name, taking bits and pieces from almost every field of the law and giving them logical form.” Louis was the great codifier. He could see securities regulation as a whole. He gave the field its shape and direction.

As long as there is a field called securities regulation, Louis’s scholarship will endure.

MARGARET R. LOSS
LeBoeuf, Lamb, Greene & MacRae
New York, New York

“Joel, I have a footnote. When my daughter, here now, was about three, one evening she was scribbling with crayons on some construction paper and with a pencil on some yellow paper. I asked what she was doing. She said the construction paper was drawing. The legal pad was working.”

Ladies and gentlemen, you've heard about my father's career in the law; you've heard about his humor; you've heard about his caring -- from people around the world. You haven't heard about his music. He was a violinist. Joel mentioned that briefly. He used to tell about playing violin in his teens for pocket money at silent movies and Daddy chose the string quintet that we are hearing today. You haven't heard about his tennis and you're not going to. It didn't take with me. And you haven't heard about his absent-mindedness.

I went to law school at the "other place" whose dean is also here present today. (I've asked him to say a few words at our reception later on. We have three deans with us today.) After I started practicing law and encountered former students of Daddy's, they would tell me stories. I had a favorite one and it has to be true because I heard it from three different students within a few weeks.

As a lot of you here may know, Daddy spoke from notes and spoke well, but inevitably about two-thirds of the way through the semester, there would be a slow day -- nobody would be prepared for class. He would call on Mr. X who would say "pass" and Ms. Y would say "pass" and after a few more of these -- by this time, of course, it was ten minutes before the end of the hour, so that he was not wasting that much classroom time -- he would have an annual "Be Prepared for Class" lecture, which took five minutes and then, at five minutes before the hour, he would stalk out of the classroom. The year in question, he stalked into the broom closet.

Daddy's and my connection of course was strongest in the law. When he had something to say to me when I was in college, back when this institution was called Radcliffe, he would take me to lunch. Early in the fall of senior year, he took me to lunch (by then I'd caught on and at least got a lobster out of it) and he didn't have much to say until dessert. Then he said, "Will you do me a favor?" A little dubious, I said, "OK, what?" "Will you please take the law boards?" I'd taken the graduate records and so I said, "Well, OK, are you going to pay the fee?" He said, "Sure." Then he shut up. I took the law boards. I then applied to Yale and only Yale. I wasn't entirely sure I wanted to go to law school, but I figured that, if I got into that institution, I would have the validation I was searching for.

Daddy took me to lunch again and I got another lobster. He said very little until dessert and then he said, "Will you do me a favor?" I said, "Sure." "Will you apply to Harvard?" "Will you pay the fee?" I had long since decided that I was not going to follow the Casner boys. I agonized over what I would do if I got into only Harvard and what he would have to say over a third lobster. Thankfully, I got into Yale. Not only did I get in, but I got in first. When I heard from Harvard some three weeks later, Daddy went stalking into the Director of Admissions' Office and said, "Look how many good students you're losing by being slow!"

His last major outing was to the 60th Reunion of his Yale Law School Class in New Haven, this past fall. It was the first time there had been a 60th reunion of a law school class, but his classmate Oscar Ruebhausen challenged me to get him there and, wheelchair van and all, I did.

You heard a lot about the treatise. I'm actually going to read some of it, so that we'll hear his voice today. The treatise and I are the same age. He started working on it about when I was born. The 1951 edition from which I'll quote contains my favorite few paragraphs of all his writing, in the first few paragraphs of the entire volume. I have another connection with it. The second edition was in galley proof the summer I was 14 and for the weeks before and after summer camp, he offered me a job cite checking. He also had law students doing the harder-to-find cites, but he taught me how to find Fed. Supp. and Fed. 2d and such at fifty cents an error, I did rather well that summer. Of course, fifty cents bought a lot of chocolate bars then.

In any event, the first section that he published is entitled, "Of Bubbles and Giants." It begins:

The Securities Act of 1933 did not spring full grown from the brow of any New Deal Zeus. It followed a generation of state regulation and several centuries of legislation in England. For the problems at which modern securities regulation is directed are as old as the cupidity of sellers and the gullibility of buyers.

A statute of Edward I, as early as 1285, authorized the Court of Aldermen to license brokers in the City of London, and there are records of a number of prosecutions against unlicensed brokers before the year 1300. Four centuries later, but still eighty years before the American Revolution [the footnote says 1697], Parliament passed "An Act to restrain the number and ill practice of brokers and stock jobbers." That statute was aimed at unlawful conspiracies by jobbers to manipulate prices . . .

It was about this time that the "Bubble Mania" swept over France and England. The story has often been told of the Mississippi Company, organized by the crafty Scotsman, John Law, and the South Sea Company, granted a monopoly by the British Government of the trading with South America and the Pacific islands -- and of how the two companies undertook to pay off the French and British public debts. During the eight months of 1719 when this financial "black death" hit France, the shares of the Mississippi Company went from 500 livres to 1800 and then down again to 400. "Footmen got up behind their own carriages, so accustomed were they to that position." In England, similarly, the shares of the South Sea Company, with George I as its governor, rose from £128 ½ at the beginning of 1720 to over £1000 in July and were selling at £125 by December, after the directors had sold £5,000,000 of stock at the ceiling.

The bursting of the South Sea Bubble ruined thousands in all ranks of society. A committee of secrecy of the Commons found, as one chronicler has put it, that there had been "robbery as well as jobbery." Reputations in the financial and political world were ruined wholesale. And the national disaster was aggravated by the numerous hoaxes which were developed by imitators. In a few months about 200 joint-stock schemes were started, calling in the aggregate for £300,000,000 sterling, more than the value of all the land in Great Britain. A thousand persons are said to have paid two guineas each in one

morning as a first installment on a share in a company “for carrying on an undertaking of great importance, but nobody to know what it is.”

The legislative result of all this was the “Bubble Act” of 1720.

He recounts that it was followed by the Companies Act of 1844, and the Directors Liability Act of 1890. He closes this section by referring to the Act of 1900, also called the Companies Act, as following a report “which is notable for its expression of the disclosure philosophy that marks both the English Companies Act and American Securities Act to this day,” and he quotes it: “it must be generally acknowledged that a person who is invited to subscribe to a new undertaking has practically no opportunity of making any independent inquiry before coming to a decision. . . . It is therefore of the highest importance that the prospectus upon which the public are invited to subscribe shall not only not contain any misrepresentation but shall satisfy a high standard of good faith.

He concludes that the British pattern had been pretty well set by the Companies Act of 1900 when the first American legislation made its appearance. He went on to discuss the states securities laws, called blue sky laws, before he launched into the main body of his treatise. He taught me the blue sky laws got their name -- and this is similar to a story that Joel shared with me at lunch -- when the Kansas legislature was debating the passage of a state securities law, and one of those gentlemen stood up and said, “We must do something to keep those city slickers from selling our farmers God’s blue sky.”

And Joel and I had different versions of another story -- Daddy’s work on blue sky law, which at lunch Joel mentioned had had an unusual number of sales in Estonia, I think, and the mystery was solved when it was discovered that it had been advertised as the latest work concerning Sputnik. The version I have is that the American edition, in English, was spotted in Japan with an advertisement in Japanese touting it as the latest American work on space law.

Now comes the hard part. I’m speaking on behalf of my family, my mother, my brother, my daughter, my nephews, the many cousins who are here, and the cousins who couldn’t make it because of the snow storm. I’m speaking to all of you, ladies and gentlemen, and very dear friends, as we remember Daddy, celebrate and say good-bye. Daddy, we miss you.

OTHER REFLECTIONS

DAVID R. HERWITZ

Austin Wakeman Scott Professor of Law

In the late Spring of 1954 I was fortunate enough to be invited to teach here for a year, because a professor unexpectedly found it necessary to be away. The first person I heard from shortly thereafter was Louis, who called to invite me to lunch. Louis had come to

the faculty after I graduated, so we had never met, and in thanking him for his thoughtfulness I addressed him as “Professor Loss.” He immediately interjected, “Its Louis, Dave; you’re a member of the team now.” It was certainly a most gracious welcome.

Thus began a lifetime friendship characterized by Louis’s constant warmth and caring. We became students together, of Professor Warren Seavey, whom we both strove to emulate in the then required first-year course in Agency. But I also had the pleasure of becoming Louis’s student, as all of us in Corporations were, as indeed the entire bar was, with respect to securities law.

In addition, we all, whatever our field, benefited from the collegiality Louis shared with us. His love of this institution was patent and contagious, and he served it so very well in so many dimensions -- from Admissions to Appointments, from Library Committee to PIL. His infectious good humor enlivened countless lunches -- and countless too were the stories with which he regaled us. Louis never took himself too seriously, though his outstanding qualities as a scholar and his skill as an advocate might have given some license. Louis was much too busy with an outstretched helping hand to have time for blowing his own horn.

In short, Louis truly enriched our lives during all the years he was with us, and we will treasure our fond memories of him always.

ANTHONY T. KRONMAN
Dean, Yale Law School

I knew Louis Loss in two capacities. The first was as a graduate of the Yale Law School, Class of 1937. Louis was as proud of his association with that other law school in New Haven as he was of his remarkably long and productive service on the faculty of this one in Cambridge. Indeed, I think it fair to say that Louis was an essential part of the connective tissue that holds our two schools together, in a gentle but stimulating rivalry without which the lives of both would be diminished. About four years ago, I visited Louis in his office and asked if it was true (as I had heard) that he was the very first graduate of the Yale Law School to be appointed to the Harvard Law School faculty. He smiled, and said “Not quite,” and then explained that he had been preceded -- by only a few months -- by another Yale graduate, Hal Berman. But still, Louis said, he regarded himself as a pioneer and took pleasure in all the other Yale graduates who have followed his earlier footsteps to the Harvard Law School. (I hardly need to add that the traffic in the opposite direction has been just as heavy and that the Yale faculty now includes many distinguished graduates of the Harvard Law School among its members.)

The other capacity in which I knew Louis Loss was as a great scholar of securities law, one of the truly great legal scholars of this century. I first met Louis in this capacity (though only, of course, at a distance) when I entered law school in 1972. At that time, Louis was already one of those great figures who occupied a high Olympian place in the

world of legal scholarship which to those of us far down below seemed untouchably distant. There he was, with Areeda and Gilmore and Fuller and Bittker and others, a scholar of such vast learning and accomplishment that those of us who were already thinking about an academic career could fairly wonder if we would ever do anything even remotely comparable in importance or worth. But there was something else about Louis's work that I feel it important to emphasize, looking back over the past 25 years from the vantage point of the present hour, and that is that Louis not only knew more about securities regulation than any other human being and understood with unmatched subtlety the links among the various statutes that define the field, but also had the ambition to comprehend his field as a whole and to be its master from top to bottom. There are many great legal scholars at work today. But the ambition to see a part of the legal landscape whole, to grasp it in its entirety -- the ambition whose outward expression is of course Louis's great treatise on securities regulation -- that ambition is now rare, nearly nonexistent, in the world of legal scholars. Why that should be is an interesting and complicated question. But as long as the memory of Louis Loss endures, he will be there to remind us of what such ambition means and of how grand its fulfillment can be. In this way, he will continue to inspire us and to draw us on, encouraging a kind of boldness that has largely vanished from the legal academy. Still, when all is said and done, and however inspiring his example will be, I know in my heart that we shall not see his likes again.

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