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A TRIBUTE

In Remembrance of Louis Loss
(1914-1997)

By Richard B. Smith

The universally acknowledged, and world renowned, dean of securities law died in Boston on December 13, 1997, at the age of 83. Louis Loss had been a beloved professor at the Harvard Law School since 1952, when he left the Securities and Exchange Commission (SEC) as its Associate General Counsel. But his reputation and teaching exceeded the bounds of his endowed chair in Cambridge and his Harvard students. He was the instructor par excellence of two or more generations of corporate and securities lawyers throughout the nation.

I first encountered the Loss name when I took a seminar in securities regulation in my last year at Penn Law School. It was based on Professor Loss's then recently published book *Securities Regulation*; indeed, it was the only text for the course since there was no other treatise in the field. Even for the professor conducting the seminar, it was new territory. Because the book was the first in what became a burgeoning field of law, many now say that Loss invented the subject and not only its title. So well written and well organized, the book opened for me, and many other young lawyers-to-be at many different law schools, a field that came to be the core of our professional careers. There could not have been a better beginning, except perhaps to have been in the Professor's own classes. That one-volume treatise, of course, has over the 40-plus intervening years now grown to an 11 volume tome. It remains the most authoritative and often cited work in the ever-expanding realm of securities law and regulation.

I learned only much later in my life that Loss was a native of my own hometown of Lancaster, Pa.; and that he had had several of the same high school teachers I had a decade later. In the delightful short autobiographical book he wrote -- his last publication -- *Anecdotes of a Securities Lawyer*, he recounted some of his boyhood days in Lancaster. He wrote that he could hardly remember when he did not have it in his mind to be a lawyer, and that as a high school student he hung around the local courthouse watching trials. In high school he liked the classroom strictness and classicism of several indigenous Pennsylvania "Dutch" teachers, who so encouraged him about going on with his education. They also consoled him with their "furious" indignation when his Jewishness was a factor in his not being awarded, despite what must have been the early indications of a towering intellect, a needed scholarship for Harvard College.

Instead, with State funded scholarship aid, he became an undergraduate at the University of Pennsylvania, where he showed the breadth of his interests by graduating from the Wharton School having had only a freshman course in economics. For law school, he went from Philadelphia to New Haven, again with full scholarship aid. While a more

direct and upfront kind of man would be hard to find, he could also be shrewd. His many admirers would be surprised to learn that the case note he wrote to obtain a place on the Yale Law Journal was entitled "Application of the Rule in Shelley's Case Where There Are Alternative Contingent Remainders," a subject he readily acknowledged he selected only in order to distinguish himself from other students inclined to write on the more popular public law questions current at Yale. Whatever the cause, and more likely again due to his inherent talent and intellectual power, he became Note Editor of the Journal.

In his last year at law school, despite a concern that his childhood ambition of being a courtroom lawyer would thereby be foregone, he considered a job in the SEC General Counsel's Office, offered at an annual salary of \$2,000. Here again, he exhibited a shrewdness, bargaining and obtaining an understanding before accepting that he would be raised to \$2,400 after three months if the General Counsel were satisfied. This was one of the best bargains ever struck by the then new regulatory agency.

The pay, however, was dependent on his having been admitted to the bar, and the recent graduate was dependent on the pay in order to live in Washington, D.C. So he took the D.C. bar exam and repaired to a small city in central Pennsylvania to live with his sister and her lawyer husband, there to wait out the several months until exam results were announced. During this interim he served as a clerk in the single practitioner's law office as a way of earning his keep. He said, he "learned a few things about private practice in a small town -- things that one does not learn in law school" and "how important it was to be a lawyer before one becomes a specialist."

Loss stayed with the SEC from October 1937 until July 1952, although towards the end of his tenure his prodigious scholarship and pedagogic inclinations led him into academic moonlighting by teaching courses part time at law schools, primarily at his alma mater Yale and then, for a term preliminary to his full professorship, at Harvard. It was in conjunction with his courses at Yale that he developed the material for his seminal book *Securities Regulation* published in 1951.

Professor Loss spread his wings, geographically, while at Harvard with the incipient internationalization of capital markets and the need for some degree of their regulation. There was not a continent that did not reach out to him for teaching and advice. His travels abroad to present scholarly lectures and to give counsel to foreign governments and institutions were extraordinarily wide-ranging. Somehow, he was able to do this while carrying a full teaching load, researching and writing successive editions of *Securities Regulation*, and consulting with private law practitioners on pending cases. Loss's breadth of interests, nevertheless, did not distract him from his calling as a scholar and teacher, for he declined overtures to become Dean of the Yale Law School at one time and Chairman of the SEC at another.

While the established expert on federal securities law, and now working on an international level, he nevertheless allowed his craftsmanship to be turned also to the state level. At the behest of the National Conference of Commissioners on Uniform State

Laws, he took on the task of being the draftsman of the Uniform Securities Act (1956). That state "blue sky" law has been enacted in 41 jurisdictions.

Not as fortunate in being enacted was yet another and potentially more important statute for which he was the draftsman. Lou Loss was the inevitable choice to serve as the Reporter for the American Law Institute's major project to create a Federal Securities Code (Code). There was a widespread realization that the separate enactments by Congress of the seven statutes and their amendments over the years and the judicial decisions and SEC actions interpreting them -- together constituting federal securities law -- needed simplification, integration, and improvement. The Reporter and his advisers met regularly and often over a ten year period, from 1969 to 1978, working over successive drafts of the Code. Its accomplishment was a masterly tour de force by its Reporter. Lou gathered 15 to 20 experts, all strong-minded (some might say opinionated) lawyers, in the same room for many lengthy meetings on a series of complicated subjects and difficult issues, and yet maintained leadership, sustained a remarkable camaraderie, and in the end obtained a result in which all joined. The late Judge Henry Friendly, one of the advisers, once said it was the most intellectual experience of his life.

The Code received the approval of the Institute membership, the Section of Business Law and House of Delegates of the American Bar Association, and the SEC itself. Unfortunately, Congress was unwilling in the early 1980s to take advantage of the Code's improvement in the law governing that critical element in a free enterprise system, its capital market. The Code was never enacted. This was undoubtedly the greatest disappointment in Lou's life. He had to be satisfied that the Code became a guidepost for many subsequent developments and remains a valuable research resource.

Loss's passing will be mourned by all who knew him in person or only by his writing or speaking. For those who knew him, this is not only for the consummate scholar that he was, but also for his warm non-scholarly side. He had a loving and accomplished wife and children. He happily shared his indomitable wit, elegant phrasemaking and superb story telling with all -- he was a wonderful raconteur. A man whom you would always enjoy being with. He was a lawyer who enhanced his profession and remains a model for all of us. He was missed these past few years when his illness kept him at home. Now the missing is final, but he has left his mark on our times, a mark of the rare great teacher who has engaged his students, many who became so without ever having met him.

Richard B. Smith is a retired partner and senior counsel at Davis Polk and Wardwell in New York, N.Y. and a former SEC Commissioner (1967-1971). He was an advisor to the ALI's Federal Securities Code.