

But Judge Friendly, however, is right—terribly right—in his insistence that the administrative agencies should make a better demonstration of their much vaunted expertise in these areas. The courts, the bar and the public might then tender them the respect that they were intended to deserve.

JAMES M. LANDIS*

* Member of New York and District of Columbia Bars; Member of Administrative Council of the Administrative Conference of the United States; Dean, Harvard Law School 1937–1946.

Securities Regulation: Cases and Materials. By RICHARD W. JENNINGS and HAROLD MARSH, JR. New York: The Foundation Press, Inc., 1963. Pp. 992. \$13.00.

This volume is the first published collection of cases and materials for use in the teaching of securities regulation; the only alternative teaching tool for this subject is the three volume text by Professor Loss entitled *Securities Regulation*¹ or the one volume abridged student's edition of the longer text. The field of regulation of securities is relatively new and is rapidly expanding. It has generally been considered as a somewhat esoteric and narrow specialty by the bar; as the extent of such regulation increases and as it reaches more and more into areas that traditionally have been regarded as within the realm of corporation law, its significance will become greater and more apparent. The availability of this book for opening up the area of securities regulation for students recognizes and fills a very definite need.

This volume, which the authors refer to as a "coursebook," contains a comprehensive and useful collection of cases and materials, prepared by editors who are obviously sophisticated and knowledgeable, both academically and practically. It speaks as of September 1, 1962, and contains many very recent materials. The fact that the authors find it necessary to indicate a cut-off date (in a manner analogous to a prospectus for a new issue of securities) is indicative of the fluidity and rapid change occurring in this field. This book will probably require rather frequent supplements (either by the authors or by any teacher using it) so that the course material will remain current.

The book is divided into three major sections: Part One deals with regulation of the distribution of securities under both federal and state securities laws; Part Two deals with regulation of trading in securities; and Part Three deals with investment companies. The most meaty, extensive and helpful collection of materials is contained in the part devoted to federal regulation of the distribution of securities. This federal material is current and well selected and contains not only significant cases but important SEC rulings and releases; it also draws heavily upon significant comment by leading securities

¹ LOSS, *SECURITIES REGULATION* (2d ed. 1961).

lawyers, reprinted mostly from *The Business Lawyer*. The state blue-sky material in this section is less extensive and seems too heavily weighted with California material, which, by virtue of the almost unique nature of the California legislation and practice, is not always of broad and general application.

Part Two, dealing with regulation of trading in securities, is well selected but is much less comprehensive than the material in Part One on distribution. Part Three, which deals with investment companies (and especially open-end mutual funds), brings together a collection that is small but very useful. One might question whether it is appropriate to treat investment companies in a separate part, co-ordinate in structure with the two other major topics with which the coursebook deals. In this connection, it should be pointed out that the book does not purport to cover all of the acts administered by the Securities and Exchange Commission; there is much interesting and important material with respect to other activities of the SEC, which is not included in this volume, such as those relating to Chapter X reorganizations, to restrictions under the Trust Indenture Act of 1939, to rulings and cases arising under the Public Utility Holding Company Act and so forth. The justification for the extended treatment of investment companies in this fashion lies in the fact that such companies are achieving immense social importance by virtue of their size and economic power and that their activities have caused a great deal of litigation and critical inquiry, which have recently resulted in increased SEC attention and in the so-called "Wharton report," from which a short excerpt is contained in this volume. This collection of material on investment companies is most useful and welcome; only a notion of symmetry prompts the above rhetorical inquiry with respect to including this material in the form in which it is presented and to excluding material related to other statutes administered by the SEC.

The authors exclude from their book all consideration of the SEC's proxy rules and the short-swing profit restrictions under section 16(b) of the Securities Exchange Act of 1934, on the ground that such matters should be considered in the law school course on corporations. The authors do, however, include a very substantial section, consisting of eighty-eight pages, on the effect of rule 10b-5 under the Securities Exchange Act of 1934. It should be noted that this material on rule 10b-5 is also included in many casebooks on corporations. If consideration of proxy rules and of liability under the short-swing provisions of section 16(b) is to be relegated to the course in corporations it could well be logically contended that most of the material under rule 10b-5 likewise belongs there. However, the authors' reluctance to omit such an important subject from a casebook on securities regulations is easily understandable because its significance is great and, in fact, it bestrides both fields.

It should also be noted, in this connection, that Chairman Cary of the SEC recently stated that "the Securities Acts may be said to have generated a

wholly new and far reaching body of federal corporation law."² The Chairman, in a review of the second edition of Professor Loss' text subsequent to the above-quoted statement, further stated: "Counsel must be aware of the rights and duties created by this jurisprudence and must appreciate its applicability to a two-man corporation as well as to A.T. & T. In all probability, this federal influence will expand rather than contract."³ This trend will be even more rapidly accentuated if the proposed Fulbright bill⁴ is enacted by Congress, extending certain provisions of the Securities Exchange Act of 1934 to issuers of a defined size whose securities are traded in the over-the-counter market.

At the present time corporation law is no longer merely that law found in the state corporation act and the decisions thereunder; the law by which a corporation's internal affairs and internal relationships are governed must include the rules and regulations of the Securities and Exchange Commission and also those of the state blue-sky commissioners of the various financial centers in which its securities may have been, or may later be, presented for sale. Without disputing the beneficent effects achieved by such use of these various securities acts, I think it is proper to raise the question of whether this oblique and indirect method of modifying corporation law is the wisest way of achieving the particular objectives. It may well be that the federal securities regulation should be superimposed upon state corporation laws. It may also well be that state securities laws should fortify or amend state corporation laws, and the authors of this book are enthusiastic advocates of the use of state securities laws for such purposes; but, it might be well if more consideration were given to this phenomenon by the bar and by legislators so that the implications of such amendments to "traditional" corporation law shall be openly recognized and publicly considered.

The authors have provided a certain continuity for their coursebook, and have amplified and explained some of the points made in the materials, by inserting short comments of their own; these comments are useful but do not pretend to the weighty comprehensiveness of the commentaries in such a casebook as Baker and Cary on *Corporations*.⁵ The authors also provide a certain amount of annotation, which is helpful and provocative rather than comprehensive; this may be attributable to the fact that case law in the field of securities regulation is comparatively scanty. The authors also include a couple of lengthy many-parted problems which should provide good subjects for classroom discussion or a useful work-out for the students who attempt to

² SEC Securities & Exchange Act Release No. 6668, p. 4, Nov. 8, 1961.

³ Cary, Book Review, 75 HARV. L. REV. 857, 858-59 (1962).

⁴ S.1168, 85th Cong., 1st Sess. (1957).

⁵ CASES AND MATERIALS ON CORPORATIONS (3d ed. 1959).

work them through. The book does not contain the texts of the various acts or regulations which are necessary concomitants to this volume. The authors assume that separate copies of those acts and regulations will be available for use with the book. It would have been very helpful had it been possible to reproduce these in an appendix so that they could be readily available instead of requiring the use of separate pamphlets. The material on state blue-sky regulations and on the definition of what is a "security" is overweighted and somewhat distorted by the disproportionate inclusion of California material. It might also have been well to shorten a number of the cases by summarizing their facts.

Despite these few observations of a minor and gently critical nature, this book is a very welcome and excellent "coursebook" which recognizes a long felt need and fills it very well.

STANLEY A. KAPLAN*

* Professor of Law, The University of Chicago

Criminal Law: Problems for Decision in the Promulgation, Invocation, and Administration of a Law of Crimes. By RICHARD C. DONNELLY, JOSEPH GOLDSTEIN, and RICHARD D. SCHWARTZ. New York: The Free Press of Glencoe, 1962. Pp. xxvi, 1169. \$15.00.

The merits of the traditional case-book approaches to teaching law have given rise to debates too numerous to recount. But *Criminal Law* constitutes so vigorous a dissent from the traditional heavy reliance upon printed decisions that it may be worth recalling two of the criticisms toward which its authors appear particularly responsive.

First, there is the complaint that the experience which has been the life of the law has all too often been the experience of lawyers alone, and that case-books have failed to keep students abreast of the teachings of non-legal fields. No doubt, the "law" that a student can read in the decision of an anti-trust case may have drawn heavily upon the literature of "economics." A hard case in the law of equitable nuisance may have forced a court to investigate the state of industrial technology, and thus to have made good law.¹ But even in those areas in which decision law has absorbed the logic of other learnings, students dieted wholly upon printed cases are better trained to keep up with the pace of the courts than to assume a lead.

Further, issues actually litigated and appealed may be somewhat narrower in scope than those with which a lawyer or legislator does or might concern himself. Thus, for example, a prisoner's civil rights action against a guard may convey a glimmer of what can happen in a prison; but as a picture of the total post-conviction concern of the criminal process, any series of conceivable

¹ See *L. Martin Co. v. L. Martin & Wilckes Co.*, 75 N.J. Eq. 39, 71 Atl. 409 (1908); *Fletcher v. Bealey*, L.R. 28 Ch. 688 (1885).