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I am gratified to be installed in the Ethan A.H. Shepley University Chair. Ethan Shepley lived the type of life I most admire. He was a man of principle and honor, who inspired trust. I particularly respect the love and pride he felt for his family. His marriage to Sophie resulted in four children: the late Ethan, Jr.; Sally Lilly; Lew, to whom I am grateful for his thoughts about his father; and his daughter Sophie.

Ethan Shepley led a remarkable public life, or, as he once wrote, a life in civic affairs. He headed Community Chest four times and was a founder of Civic Progress. He was implored to run for Governor of Missouri at the age of 68. He was devoted to his church. Two of his siblings, Margaret Shepley Allen and John Rutledge Shepley, once wrote that the two most important undertakings in Ethan's life were "Christ Church Cathedral and Washington University."[1] Ethan Shepley also served on the boards of directors of Anheuser-Busch, Inc., Mallinckrodt Chemical Company, Southwestern Bell Telephone Company, Northwestern Mutual Life Insurance Company, and the Manufacturers Bank and Trust Company.

Ethan Shepley was an active legal practitioner, and so respected that he was selected to be a Trustee of the Oliver Wendell Holmes Devise, which is producing a monumental history of the United States Supreme Court. He also received the first Distinguished Alumni Award of our School of Law's Alumni Association.

Ethan Shepley was selected to be the Chancellor of Washington University in 1954, during a period when academic freedom was sharply questioned. He supported and defended the best scholars, including, notably, Edward C. Condon, an outstanding physicist who

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* Dean and Ethan A. H. Sheply University Professor of Law. This Article is a slightly revised version of an address delivered by the author on September 16, 2000, on the occasion of his installation as the Ethan A.H. Sheply University Professor of Law.

1. MARGARET SHEPLEY ALLEN & JOHN RUTLEDGE SHEPLEY, ETHAN 33 (1978).

earlier was forced to leave government service, and Dr. William H. Masters, whose research at Washington University was very controversial. In 1959, Ethan Shepley received the E. Alexander Meiklejohn Award for Academic Freedom for his commitment to intellectual freedom, given by the American Association of University Professors. In 1962, the Civil Liberties Committee of St. Louis gave him the civil Liberties Award.

Ethan Shepley was a builder. As his brother and sister wrote:

> During Mr. Shepley's tenure as chancellor, 1953 to 1961, the University's undergraduate divisions made the transition from a local to a national student body; faculty salaries became more competitive; an outstanding library, the John M. Olin Library, became a reality; and through Mr. Shepley's thoughtful and consistent leadership the University gained a national reputation among academic institutions as a place where academic freedom was reality rather than rhetoric.[2]

I accept this Chair with the pride and humility that Ethan's example inspires, and, as it is customary on such occasions, will make a few remarks suggesting the basis for so significant an honor. I am both a scholar of securities regulation and a Dean, and so I will attempt to address both topics while suggesting a few common themes.

My topic formally is "The Changing Nature of Federal Regulation." We have seen throughout this century an accelerating dynamic by which the regulation of securities sales and securities sellers has progressed from a state model to a concurrent federal-state model, and most recently to an increasingly national-international model. The academic's question is: "Why?" I will develop my analysis sequentially, using the past century's experiences as an illustration.

THE STATE SYSTEM OF SECURITIES REGULATION

In 1911 the failure of state corporation statutes to prevent securities fraud gave rise to the first significant legislative response

2. *Id*. at 55.

when Kansas enacted the first well known state securities law.[3] The law was popularly known as a "blue sky" law, because its intention was to check stock swindlers so barefaced that they "would sell building lots in the blue sky."[4]

After the U.S. Supreme court held that the blue sky law was constitutional in 1917,[5] the blue sky movement swept the country. By 1933 every state except Nevada had a state securities law in effect.

Statutes enacted with such fanfare and general support are rarely subsequently so universally deprecated. In the brutal glare that followed the 1929-1932 stock market crash, virtually all commentators and congressional witnesses on the subject agreed that the blue sky laws never really had a chance to succeed. As early as 1915, the investment bankers association reported to its members that they could "ignore" all blue sky laws by making offerings across state lines through the mails. Unscrupulous securities promoters soon adopted the technique.

THE NEW DEAL'S SEC

Beginning in 1933, the New Deal Congress enacted six statutes to create a national system of securities regulation.[6] At its core, the primary policy of the federal securities laws involved the remediation of information asymmetries. This is most obviously true with respect to the mandatory disclosure system that compelled business corporations and other securities issuers to disseminate detailed, generally issuer-specific information when selling new securities to the public. The mandatory system also required specified issuers to file annual and other periodic reports containing the same or similar information. The system was a response, in essence, to the failure of business and foreign government issuers to sufficiently disclose

3. Law of March 10, 1911, Ch. 133, Laws of Kan. 210.

4. *See* Thomas Mulvey, *Blue Sky Law*, 36 CAN. L. TIMES 37 (1916).

5. *See* Hall v. Geiger-Jones Co., 242 U.S. 539 (1917).

6. The Securities Act of 1933, 15 U.S.C. § 77a (1994); the Securities Exchange Act of 1934, 15 U.S.C. § 78a (1994); the Public Utility Holding Company Act of 1935, 15 U.S.C. § 79 (1994); the Trust Indenture Act of 1939, 15 U.S.C. § 77aaa (1994); the Investment Company Act of 1940, 15 U.S.C. § 80a-1 (1994); the Investment Advisers Act of 1940, 15 U.S.C. § 80b-1 (1994). For general descriptions, see 1 LOUIS LOSS & JOEL SELIGMAN, SECURITIES REGULATION 226-69 (1989).

information material to investment decisions in the period preceding the enactment of the Securities Act of 1933 and the Securities Exchange Act of 1934.

The historical significance of the mandatory disclosure system is one of the most enduring achievements of the New Deal. Before the SEC popularized this then-little-used form of regulation, the basic policy choice was between laissez-faire and the type of control over rates and entry employed by the former Interstate Commerce Commission. The full disclosure ideal of the federal securities laws represented a new approach and has enjoyed spectacular success. In 1930 the United States had a population of approximately 123 million, of whom approximately 1.5 million—or 1.2%—had securities accounts.[7] Between 1929 and 1990, the number of U.S. investors increased over thirty-fold, to 51.44 million, and the proportion of the U.S. population owning stock rose from 1.2% to 21.1%.[8] As early as 1980, 133 million persons indirectly owned stock through institutional intermediaries.[9]

Extraordinary tensions are masked by this growth in investors and counterpart gains in the size of the securities markets. During the past two decades, U.S. securities trading has increasingly integrated into a global trading system at a breathtaking pace. As recently as 1975, U.S. investors purchased and sold a mere $3.3 billion of foreign stock; in that same year foreign investors purchased and sold over $26 billion of U.S. stock.[10] Within twelve years, U.S. investment in foreign stocks had increased to $187 billion and foreign investment in U.S. stocks to nearly $500 billion.[11] In 1990, 434 foreign companies were reporting in the United States; today, there are over 1,000 foreign companies from fifty-one countries.

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7. *See* Joel Seligman, *The Obsolescence of Wall Street*, 92 MICH. L. REV. 649, 654 (1995).

8. *See id*. at 659. *See also* NEW YORK STOCK EXCH., SHAREOWNERSHIP 1990, at 10 (1991).

9. NEW YORK STOCK EXCH., SHAREOWNERSHIP 1980, at 1 (1981).

10. SECURITIES & EXCH. COMM., STAFF REPORT ON INTERNATIONALIZATION OF THE SECURITIES MARKET II-73 (1987).

11. Offshore Offers & Sales, Securities Act Release No. 33-6779, 41 SEC Dock. 126, 131 (June 10, 1988).

THE CHANGING FACE OF REGULATION

Today there is a significant movement to supplant, at least in part, exclusively U.S. disclosure standards for U.S. investors with a new regime of internationally developed standards. This suggests we are at the advent of a new system of securities regulation where international standards may prove to be equivalent to our federal standards today, as our national standards may become "local." The "localizing" of our federal standards would make possible a one-stop filing and review process to simultaneously register and sell securities in leading markets throughout the globe.

Profound changes from the impact of information technologies have significantly augmented the impact of growing internationalization. Much of the recent history of the stock markets involves the transition from manual to computer transactions. This transition became a matter of regulatory concern in the late 1960s, when nearly 200 broker-dealer firms, all members of the New York Stock Exchange, experienced difficulties with clearance and settlement—or "back office"—operations. The difficulties resulted from a volume surge; from 4.89 million shares per day in 1964 to 14.9 million shares per day in December 1968, aggravated by often self-defeating efforts to engage in "instant computerization" of back offices.[12] In the early 1970s, over-the-counter trading was revolutionized by the replacement of the daily pink sheets with the NASDAQ electronic system, which permitted brokers to read up-to-the-minute market makers' quotations from desk top terminals.

Today, computers perform a significant role in order execution. Several exchanges use telecommunications to forward orders to specialists, replacing manual transmission by floor brokers. The Intermarket Trading System (ITS) similarly links several stock exchanges and the NASDAQ. More elaborate proposals to create a national market system with system-wide computerized order execution have thus far not been realized.

The recent public announcement that the New York Stock Exchange is considering changing its not-for-profit status with a

12. *See* Seligman, *supra* note 7, at 665.

public sale of stock has profoundly reopened questions about market structure and market regulation. The debate revolves, in its simplest terms, around the practical question: Do we need stock exchange floors or can we adopt a screen-based world of securities trading?

When I first wrote about securities regulation over twenty years ago, the fundamental questions were: What is a security? What is fraud? Today, the fundamental challenge is managing change in a world that is robustly dynamic but whose current direction is unclear.

I face a similar challenge as Dean of Washington University School of Law. The great question for our faculty and I is how to educate students for a profession that is similarly experiencing a period of extraordinary dynamism. As with the securities markets, we are increasingly educating our law students to participate in a legal system that is becoming more international in nature. As with securities regulation, our scholarship and practice has been transformed by information technology. We, too, debate fundamental questions of structure as the American Bar Association considers whether multidisciplinary firms combining the law with accounting or other professions should be welcomed here as they now are in Europe.

In striking senses, however, the mission of legal education is different than that of the securities markets. The ultimate ambition of the law is not profit, but a system of justice. We must be pluralists and exhibit respect and due process for each of our citizens regardless of race, gender, religion, philosophical beliefs, or sexual orientation. Our ambition, as the frieze in front of the Supreme Court so aptly states, is: Equal Justice for All.

Our task as educators is to recognize that the standards of legal ethics grow more important in an increasingly competitive and "bottom line" world.

We must never forget that we are educating lawyers for whom doctrine, the core of our curriculum, and "learning how to think like a lawyer" have long proved the most valuable aspects of their legal education. The royal path to wisdom, Louis Brandeis wrote over 100 years ago, is teaching students self-learning. None of us can accurately predict the contours of our legal system throughout the fullness of their careers. We can educate our students to be effective in a world in which change is the one most likely constant.

At this school today, the faculty is engaged in a wide ranging strategic planning process that will address many of these concerns. The Washington University School of Law that evolves may build on its considerable strengths in such areas as interdisciplinary legal studies, international law and policy, clinical legal education, and business law.

I hope we never forget the great tradition of teaching and accessibility that characterizes our School. I, personally, will be inspired in this mission by the spirit of humility and respect for academic freedom that Ethan Shepley so well personified.