

March 2000

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### Recommended Citation

David S. Ruder, *A Tribute to Richard W. Jennings*, 88 CALIF. L. REV. 272 (2000).

### Link to publisher version (DOI)

<https://doi.org/10.15779/Z383T57>

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## A Tribute to Richard W. Jennings

David S. Ruder†

Richard W. Jennings was a brilliant scholar and a consummate gentleman. His writing greatly enhanced my ability to deal with the field of securities regulation during a teaching career beginning in 1961 (and still continuing) and contributed in important ways to my leadership of the United States Securities and Exchange Commission from 1987 to 1989. His high level of organization, his tremendous ability to write about complicated subjects in an uncomplicated way, his comprehensive coverage of the securities law field, and his continual focus upon the most important recent developments in that field helped academics and students to understand a field that is opaque to many.

I first met Dick Jennings in 1966, when a group of the country's best securities lawyers and professors met at Northwestern's Law School at the urging of Ray Garrett, Jr., to debate the question whether an effort should be made to codify and improve the law of securities regulation. As the coauthor with Harold Marsh, Jr., of the first and then only casebook in securities regulation,<sup>1</sup> Dick Jennings' insights were extremely helpful in guiding an assemblage of the country's best securities lawyers toward a comprehensive codification project.<sup>2</sup>

The preface to the First Edition of Jennings and Marsh, *Securities Regulation*, dated September 1, 1962, says much about the authors, and particularly about Dick Jennings. As a person, Dick Jennings was warm, precise, and occasionally impatient. One can never be sure who pens words in a jointly authored piece, but I am comfortable attributing the following sentence to Dick Jennings: "This book was born out of the Editors' frustration in trying to locate satisfactory materials with which to teach a third-year course in securities regulation."<sup>3</sup>

My experience with the First Edition of Jennings and Marsh involved an exciting effort to understand the securities laws and at the same time

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1. See RICHARD W. JENNINGS & HAROLD MARSH, JR., *SECURITIES REGULATION: CASES AND MATERIALS* (1963).

2. The American Law Institute's Federal Securities Code Project, aimed at codifying the various federal securities laws, was first discussed in 1964 when William L. Cary, then Chairman of the Securities and Exchange Commission, advanced the idea at a meeting of the ALI Council. The 1966 Northwestern meeting was attended by the country's leading securities lawyers and resulted in strong support for the project. Under the leadership of Professor Louis Loss, the Codification Project began in 1969 and culminated in a completed two-volume work in 1980. Professor Jennings served as an Adviser to the project. I served as a Consultant for Parts XVI and XVII. See *FEDERAL SECURITIES CODE* at v-ix (1980).

3. See JENNINGS & MARSH, *supra* note 1, at ix.

to teach the subject during my learning process. I have now taught the Securities Regulation course using all eight editions of Jennings and Marsh, and have followed the development of securities law in part through the excellent scholarship presented in its various editions. Dick's fine hand and clear mind were evident throughout, particularly in interpreting and understanding the Securities Act of 1933. Phrases he used, such as the "pre-filing period," the "waiting period," and the "post-effective period,"<sup>4</sup> remain an important part of my teaching technique. Of course, if Dick read this he would probably inform me that Professor Louis Loss used those terms in his treatise, *Securities Regulation*,<sup>5</sup> and that he merely incorporated them into teaching materials. My response is that his book made those terms and others come alive in an orderly and comprehensive manner.

As the years passed, the Jennings and Marsh casebook began to expand in size and to cover more material, growing in importance because of its comprehensive coverage, including textual treatment of many areas, and absence of the hide-the-ball word "query." At least by the year 1977, when the Fourth Edition was published, the combination of cases, SEC releases, portions of articles by others, and extensive textual treatment had caused the book to grow to a relatively large size (from 984 pages of text in 1963<sup>6</sup> to 1423 pages of text in 1977<sup>7</sup>). In a Jennings-like observation, the Preface to the 1977 Fourth Edition states: "We make no apologies for the length of this book,"<sup>8</sup> a sentence that remained in the 1982,<sup>9</sup> 1987,<sup>10</sup> and 1992<sup>11</sup> editions and did not disappear until the 1998 edition of the book, when the editorial "baton" passed to Professor John C. Coffee, Jr., and Professor and Dean Joel Seligman.<sup>12</sup>

The increased pages in Jennings and Marsh resulted primarily from an increase in the subjects covered. The First Edition, published in 1963, covered regulation of the distribution of securities under the Securities Act of 1933, regulation of trading in securities, and regulation of investment companies. The Eighth Edition of Jennings and Marsh, published in 1998,

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4. *Id.* at xv.

5. LUIS LOSS, *SECURITIES REGULATION* (1951).

6. *See* JENNINGS & MARSH, *supra* note 1.

7. *See* RICHARD W. JENNINGS & HAROLD MARSH, JR., *SECURITIES REGULATION: CASES AND MATERIALS* (4th ed. 1977).

8. *Id.* at xvii.

9. *See* RICHARD W. JENNINGS & HAROLD MARSH, JR., *SECURITIES REGULATION: CASES AND MATERIALS* at xviii (5th ed. 1982).

10. *See* RICHARD W. JENNINGS & HAROLD MARSH, JR., *SECURITIES REGULATION: CASES AND MATERIALS* at xxi (6th ed. 1987) (remaining in a reprint of the 1987 Preface).

11. *See* RICHARD W. JENNINGS ET AL., *SECURITIES REGULATION: CASES AND MATERIALS* at xi (7th ed. 1992).

12. *See* RICHARD W. JENNINGS ET AL., *SECURITIES REGULATION: CASES AND MATERIALS* (8th ed. 1998). In a 1998 text containing 1656 pages, a reduction from the 1659 pages contained in the 1992 edition and the 1674 pages contained in the 1987 edition.

reflects the tremendous growth and complexity of the securities law field. In addition to an expanded discussion of regulation of the distribution of securities and regulation of trading in securities, the book (now omitting coverage of the Investment Company Act) also covers the current financial markets, new investment products, exchange regulation, tender offers, securities law enforcement, and the internationalization of securities regulation.

Throughout all the years in which Dick Jennings and Harold Marsh were providing a securities law road map for law teachers and students, they seemed to share with all of us the wonderment that a field so full of change could constantly become more complicated and intriguing. Their incredulity leaps from the prefaces of their work:

Second Edition, 1968: "The almost six years which have elapsed since the first edition of this book have seen the most rapid and far-reaching developments in the field since 1933-40."<sup>13</sup>

Third Edition, 1972: "The past ten years have been a period of unprecedented developments in the securities industry."<sup>14</sup>

Fourth Edition, 1977: "The past fourteen years have been a period of unprecedented developments in the securities industry."<sup>15</sup>

Fifth Edition, 1982: "[In 1962] . . . few would have predicted the extent to which [the revolution in securities regulation] has continued and accelerated during the past six years."<sup>16</sup>

Sixth Edition, 1987: "[In the past 25 years] . . . there have been multiple, and overlapping revolutions in the structure and functioning of the securities industry and in the securities markets."<sup>17</sup>

Seventh Edition, 1992: "The five-year period since the publication of the Sixth Edition has been one of unprecedented changes and even revolutionary developments, both in the financial markets and in the landscape of securities regulations."<sup>18</sup>

During the many years after my mid-1960s introduction to Dick Jennings and Jennings and Marsh, *Securities Regulation*, I had many

13. RICHARD W. JENNINGS & HAROLD MARSH, JR., *SECURITIES REGULATION: CASES AND MATERIALS* xi (2d ed. 1968).

14. RICHARD W. JENNINGS & HAROLD MARSH, JR., *SECURITIES REGULATION: CASES AND MATERIALS* xv (3d ed. 1972).

15. JENNINGS & MARSH, *supra* note 7, at xv.

16. JENNINGS & MARSH, *supra* note 9, at xvii.

17. JENNINGS & MARSH, *supra* note 10, at xix.

18. JENNINGS ET AL., *supra* note 12, at iii. The 1998 Preface to the Eight Edition written by the next generation of authors, Professors Coffee and Seligman, omits reference to "revolutionary developments," perhaps in recognition that the securities law field constantly remains subject to "revolutionary" change.

wonderful opportunities to know and appreciate Dick. At meetings involving the Federal Securities Code project of the American Law Institute in the 1970s, at the annual San Diego Securities Regulation Institute, and at meetings of the Securities Law Committee of the American Bar Association Section of Business Law, I was regularly exposed to his intellectual excellence and encyclopedic knowledge. I also gleaned small things about his personality. For instance, I saw his methodical attitude regarding grading blue books: "Grade for four hours, ski for four hours," and his unwillingness to accept overreaching by others: "I will not pay New York prices for California wine."

As the revolution in securities law continues, we will all benefit from Dick Jennings's mobilization of the field into a coherent area of teaching, his insightful comments about the law as it has developed, his dedication to his chosen field, and his wonderful personal characteristics.