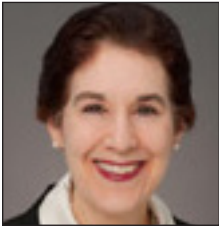


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Welcome to the Virtual Museum and Archive of the History of Financial Regulation

by Carla L. Rosati, CFRE



Carla L. Rosati, CFRE, is founding executive director of the Securities and Exchange Commission Historical Society and founder of the virtual museum and archive of the history of financial regulation at www.sechistorical.org. Quotations for this article are taken from the museum collection. The virtual museum and archive is built and exhibited independent of SEC oversight and receives no public funding. The Society is grateful for the 2016 sponsorship of the Federal Bar Association's Securities Law Section.

"Sunlight is said to be the best of disinfectants; electric light the most efficient policeman."—Louis Brandeis¹

Louis Brandeis wrote those words a century ago. If Justice Brandeis were alive today, he would love the virtual museum and archive of the history of financial regulation, which can be found at www.sechistorical.org. It's the pre-eminent source for trusted and verified information and material on the regulation of the capital markets from the 20th century to the present.

"There are only two ways yet known of protecting investors. One is flatly to prohibit certain kinds of corporate activity, trusting that you will catch in your net of prohibitions the dodges through which investors' savings are usually lost or dissipated. That is not a good way; because the business processes of today are complex, conditions change overnight, honest corporate managements not only want but thrive under a wide freedom of action. The other method is to give your corporation pretty wide latitude in what it does, within reasonable limits, and then make your directors and officers personally liable for any abuse of the machinery. In substance, you say to people, 'Take all the power you want; but you, individually, are responsible for the use of power.'"—Adolf Berle²

Founded in 2002, the museum was the first to break the boundaries of time and place by harnessing the power of the internet to provide unprecedented access to primary and original material across the spectrum of financial regulation.

When you enter www.sechistorical.org—which is free and accessible worldwide at all times—you join thousands of daily visitors who access the museum, including regulators from federal, international, state and municipal agencies; self-regulators; practitioners

from corporations and law, accounting, auditing, and financial services firms; and professors and students in business, economics, and law. All rely on the museum to provide them with quick and easy access to information from more than 8,000 materials currently in the collection, which is growing each month.

"When self-regulation is in fact SHARED regulation—when industry practitioners work in concert with regulators and self-regulators—it promotes a culture of integrity that pervades the entire securities industry. In such an environment, investor confidence flourishes."

—Joseph R. Hardiman³

Since it opened on June 1, 2002, the museum collection has used original materials from verified and reputable sources, as well as creating its own primary materials in the Timeline, Galleries, Oral Histories, and Programs sections. Visitors access firsthand information when they read the words, see the images, and listen to the voices of people from all parts of the financial regulatory spectrum.

There are two points to keep in mind as you access www.sechistorical.org:

1. The name of the organization—the Securities and Exchange Commission (SEC) Historical Society—is a misnomer with our museum. The museum is not just the history of the U.S. Securities and Exchange Commission. It is the history of many regulatory agencies, as well as those who are regulated, which means each and every one of us.
2. This is a museum. You may call it a website, but

the definition of a website is a set of related web pages served by a single web domain. That definition scarcely covers our thousands of current materials or the way those materials are integrated with each other. Our museum qualifies under all the American Association of Museums' criteria except for one: it is not a physical site. It's time to recognize that museums can be more than bricks and mortar.

"I remember going to [an NASD] member firm, a small broker-dealer. When I asked for his bank statements and bank reconciliations, the response I got was 'My wife doesn't see this information, so why should I show it to you?' I'm pretty certain if it was a male examiner on the other side of the table, it would have been a very different dialogue."—Grace Vogel⁴

So what's in our virtual museum and archive of the history of financial regulation? Let's open the front door and access the Features. Each month, one or two Features on the front page of the museum highlight new or significant materials from the collection or recognize an anniversary in financial regulatory history. One of our annual Features is "Women in Financial Regulation" in March, which commemorates International Women's Day and links to oral histories and interviews with women in the museum collection. Another annual Feature is "Back to School" each August, which highlights material from the collection useful in the teaching and study of law, accounting and auditing, business and economics.

"People from the [SEC] Denver office were in a little town in Wyoming having breakfast at a restaurant. There were a couple of guys in the next booth, and one described a very complex scheme to defraud. The other guy said, 'Well, what about the SEC?' The first guy says, 'Hell, they can't be everywhere.'"—Gerald Boltz⁵

On the left side of the front page of www.sechistorical.org is the navigational column, facilitating access to all the primary and original materials currently in the museum collection. The search function makes access even easier, allowing users to find materials by name, subject, or date.

"The CBOE faces an unusually tough management challenge. It must deal with a complex product line and complex customer relations. It must deal with many constituencies, with little direct control over them. And it must deal with these in a cultural environment which is, of its nature, short term, transactional, and crisis-oriented."—Report of the Organizational Task Force⁶

Under What's New, New in the Museum lists all new materials—including papers, oral histories, interviews, programs, photos, or media—added to the permanent collection at the beginning of each month. The museum adds a variety of new materials each and every month.

"When I went to law school, I knew what I didn't want. I didn't want a career that was adversarial in nature. I didn't want a career working on issues that spanned years and years and years, like some litigation matters. I wanted a career where something good happened. I wanted tangible evidence of what

I was working on. I wanted a career that, by and large, was a cooperative and goal-oriented arrangement, where people get together to figure out the best way to make something happen, and three, four years down the road, you drive past and see the school or the hospital or the roads that you helped finance."—Lynnette Kelly⁷

Also under What's New, the Calendar helps you keep abreast of upcoming actions in the museum, such as live program broadcasts, the expansion of the Timeline, new Galleries, and new Features.

"Please convey to Mr. [Charles] Gay my best wishes. I cannot help but contrast the expressions of regret at his retirement from the management of the Exchange with the feeling in the street that would follow my announcement that I was going back to Yale."—SEC Chairman William O. Douglas⁸

Under In the Museum, you enter into the permanent collection of the virtual museum and archive. The Timeline—as "the museum within the museum"—is first, providing visitors with an overview of the history of financial regulation. The Timeline links financial regulatory developments, with a brief thumbnail description of each, in the context of U.S. and world events from 1930 to the present. It is important to understand what is happening in financial regulation in light of what is happening in our nation and our world. Sometimes these spheres come together, such as in 2001, when the attacks of 9/11 were attacks on the financial markets.

"He said that he had big copper mine holdings in Arizona and that they were putting in new machinery there and new equipment, and that he was going to retire from the legal practice to devote all of this time and energy to this, if I would marry him, because he could double his income—his first wife had killed all ambition in him, and he hadn't any desire to make more money, and had sort of rested on his oars, but if I would marry him he would work this mine, and we could live like I had been accustomed to living and as he would enjoy living."—Doris Farid⁹

Galleries are unique permanent exhibits within the permanent museum collection that bring together materials from throughout the collection on a financial regulatory subject. Each Gallery provides an alternate search, in addition to the museum's robust search function, giving access to related materials—papers, photos, oral histories, interviews, programs, and media—linked to a framework essay. Current Galleries explore such topics as financial scandals, corporate governance, women in financial regulation, municipal securities regulation, accounting standards setting, self-regulatory organizations, and international financial regulation. On Dec. 1, the museum opened "Regulating the Regulators: The Executive Branch and the SEC, 1981-2008" as its 15th permanent Gallery.

"You have won the *O'Hagan* case. I hold you exclusively responsible for this great victory by the Commission. You have shown the same great legal skills that you used when you were at our firm and were the cause of our great victory over the Commission in the *Dirks* case. I hope never to find myself in a position where I have to face your formidable talents in opposition again."—Milton Freeman¹⁰

With more than 6,000 documents, Papers is the largest and most-used section of the virtual museum and archive. The collection is wide-ranging and varied, beginning with the 1792 Buttonwood Agreement, which founded the predecessor of the New York Stock Exchange. Papers includes not only official documents, such as acts and speeches, but also “behind the scenes” records such as letters, memoranda, telegrams, and emails. Papers often can provide an eyewitness account of then-current regulatory developments:

“Ben [Cohen] spoke for 17 minutes. The room was electric. He was nervous, he was not in appearance prepossessing, but he rudely awakened the Court from its customary afternoon doldrums. The Justice [Louis Brandeis] relaxed with an almost beatific smile on this face; [Hugo] Black perched himself on the edge of his chair, cupped his face in his hands and didn’t move while Ben spoke; [Owen] Roberts simply glowered and looked away; [Harlan] Stone leaned back, put his head on his chair and stared at the ceiling; the Chief [Charles Evans Hughes]’s eyes began to sparkle and he sat rigidly erect. I know how melodramatic this must sound, but no one who was there can deny that all of this is true.”—David Ginsburg¹¹

The Oral Histories section currently contains over 200 interviews—preserved in audio and edited transcript formats—with men and women from across the regulatory spectrum and around the globe, both those who worked in regulatory agencies and those who were regulated.

“As I’m teaching, whether Reg. FD, or the special insider trading rules (10b5-1 and 2), or other things that I had a hand in, I’ll have to disclose my role to students under [Columbia University] Law School’s conflict rules. This may add a bit to my credibility and student interest in an area; it certainly adds to my insight. On the other hand, much of what I did in Washington came from ideas that I developed while teaching. In my case, teaching and public service have worked together extremely well.”—Harvey Goldschmid¹²

The more oral histories interviews the museum collection contains, the richer the tapestry for visitors to access and to experience the humanity and character of each person sharing his or her remembrances.

“I think [the] broken windows [strategy] has gotten a bad rap. I think maybe the moniker isn’t all that great, and on some level I have always regarded these kinds of cases as being really infrastructure cases. I see them not as wasting resources but as helping, it’s like a force multiplier, which is a phrase or term [SEC Chair] Mary Jo [White] has used on a number of occasions. If you’re picking up the right areas and you can beef up compliance in particular areas, then you’re either going to stop problems from developing, or at least you’re going to make them easier to detect.”—Andrew Calamari¹³

The virtual museum and archive broadcasts programs throughout the year that are free and accessible worldwide without prior registration. Programs are preserved in audio or video format with an edited transcript and are accessible after broadcast at any

time. The museum currently broadcasts three continuing program series. Morgan Lewis Presents addresses current issues in financial regulation of interest to the legal profession. The Deloitte Fireside Chats are interactive programs on current accounting and auditing topics in financial regulation. The Experts Forum, sponsored by FTT Consulting and Compass Lexecon, discusses cutting-edge issues at the intersection of finance, economics, and regulation.

“Just the shock of WorldCom, it was several times the size of Enron. Enron, of course, was the largest bankruptcy in history at that time, and then just six or seven months later, WorldCom exceeded that by several times over. Sarbanes-Oxley was about accounting, auditing, it was about corporate governance, but in a larger sense, it was about restoring confidence to investors in the marketplace.”—Peggy Peterson¹⁴

The Photos section provides the images and settings of the persons significant in financial regulation from the late 19th century to today.

“There is no substitute for common sense.”—Bradley Heald¹⁵

Film, Radio and Television is the newest section in the virtual museum and archive, providing both silent and sound media. One of the rare materials in the museum collection is the April 12, 1938, Hearst Metrotone News of the Day newsreel, “Sing Sing’s Gates Close on Richard Whitney.” Whitney, former head of the New York Stock Exchange—“the man whose downfall shocked the nation”—is shown entering “grim Sing Sing on the Hudson” after his conviction for embezzlement. The narrative follows Whitney “nearing the Big House” and “last to emerge, handcuffed to petty racketeers, a fallen idol,” and concludes with “from this day forward, Richard Whitney becomes a number, No. 94835 Sing Sing Prison.” Crime does not pay!

“I know the realities of saying ‘no’ to a client. I know the disappointment some clients express when the auditor makes a decision to support an accounting proposal that may reduce those clients’ reported earnings. I know the long and often heated telephone calls and client visits, the emotional strain, and the financial cost that follow such decisions. But I also know the rewards—a clean conscience, not having to worry about losing lawsuits based on the merits, and pride in the profession and the credibility of financial accounting and reporting.”—Walter Schuetze¹⁶

What can the museum do for you? The virtual museum and archive can provide you—at any place or at any time—with content and context for your work. It offers you ease of use and time saved in accessing the knowledge you seek and confidence that the information you use will be authentic.

The development of the museum has mirrored the changes in technology. When the museum opened in 2002, it was built for use on desktop computers, the only computers available at the time. When tablet computers debuted, the museum infrastructure was adapted to facilitate access on both devices. Now, with the prevalence of smartphones, the museum interface has once again been rebuilt to allow for use on mobile devices, in addition to desktop and tablet computers.

“In recent years, the old familiar patterns in the securities industry have been disrupted by the appearance of two new forces: institutional investors and computers. By mobilizing capital, the institutional investors have acquired the power to influence the way markets are made. Computers, because of the communication systems they make possible, offer the means to radically improve the way markets operate. Both of these forces have developed apart from the New York Stock Exchange. Together, they have had a pronounced impact on the New York Stock Exchange’s performance as the principal market.”—William McChesney Martin Jr.¹⁷

What can you do? First, bookmark the museum. Add www.sechistorical.org to your favorites for quick access. Next, sign up under Get Connected to receive e-newsletters on new materials and upcoming programs. You may also want to join in support by clicking on Give Today to make your gift to the museum. As the museum receives no public funding, your gift will directly support the access, building, and outreach of www.sechistorical.org to thousands of visitors each and every day.

The virtual museum and archive is our unique and proudest achievement, providing trusted information and materials from verified sources, integrating knowledge from across the spectrum of financial regulation, and harnessing the power of the internet to make it free and accessible to all. Thanks to visitors like you, we will continue to preserve the integrity and independence of www.sechistorical.org for all.

“The decision of the New York Stock Exchange to take no action against its various members who were involved in the Whitney episode does not necessarily indicate that the ideal of self-regulation is impossible. It does, however, suggest the kind of limitation under which even the ablest and most upright management presently functions, as respects self-policing. It also suggests that the appropriate balance (by statute or otherwise) between stock exchanges and the federal government has not yet been attained. It will not be attained until

rules are applied to the little fellow and the big shot alike.”—William O. Douglas¹⁸ ☉

Endnotes

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⁵Gerald Boltz, Roundtable on Regional Administrators (May 29, 2003).

⁶*Report of the Organizational Task Force*, Chicago Board Options Exchange (Oct. 11, 1984).

⁷Interview with Lynnette Kelly (Apr. 4, 2014).

⁸Telegram from William O. Douglas, SEC Chairman, to John Forrest, New York Stock Exchange (May 18, 1938).

⁹Selected pages from transcript of *United States of America v. Constantino Vincent Riccardi* (June 3, 1948).

¹⁰Letter from Milton Freeman to Eric Summergrad (June 30, 1997).

¹¹Letter from David Ginsburg to Felix Frankfurter, professor, Harvard Law (Feb. 12, 1938) (on U.S. Supreme Court arguments in *SEC v. Electric Bond & Share*).

¹²Interview with Harvey Goldschmid (June 17, 2013).

¹³Andrew Calamari, *Morgan Lewis Presents 2015: Burning Issues at the SEC* (Sept. 29, 2015).

¹⁴Transcript of *A Measured Response? The Sarbanes-Oxley Act Of 2002 As a Case Study of Public Outrage Inspiring Financial Legislation* (Nov. 15, 2012).

¹⁵Television interview with Bradley Heald, South Carolina deputy securities commissioner (Jan. 7, 1964).

¹⁶Remarks by Walter Schuetze to American Institute of Certified Public Accountants, *A Mountain or a Molehill?* (Jan. 11, 1994).

¹⁷William McChesney Martin Jr., *The Securities Market—A Report, with Recommendations* (Aug. 6, 1971).

¹⁸Draft U.S. Securities and Exchange Commission statement (Dec. 19, 1938).

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Prevention of Epidemics and Civil Liberties

The Federal Bar Association encourages and contributes to a discussion of the competing considerations between governmental restrictions to guard against epidemics and pandemics and the preservation of individual rights, as well as the use of technology to ensure the continuance of participatory governance.

Safety of Administrative Judges

The Federal Bar Association supports the efforts by the Social Security Administration and the Executive Office of Immigration Review to take appropriate steps to ensure the security of their administrative law judges and immigration judges, and all others who participate in its proceedings.

Veteran Disability Claims Adjudication

The Federal Bar Association supports legislative and administrative improvements to the veterans disability claims process in the De-

partment of Defense and Department of Veterans Affairs to ensure equitable and expeditious determinations.

Attorney Fee-Based Representation of Veterans

The Federal Bar Association supports proposals to expand the availability of fee-based representation of veterans in the disability claims process and to oppose any efforts to repeal the authority of attorney representation to veterans in the furtherance of such claims.

Frivolous Litigation

The Federal Bar Association opposes legislative proposals to eliminate judicial discretion in the imposition of sanctions for frivolous litigation, including proposals to revise Rule 11 of the Federal Rules of Civil Procedure by imposing mandatory sanctions and preventing a party from withdrawing challenged pleadings on a voluntary basis within a reasonable time. ☉