BOOK REVIEW

THE SEC AND CORPORATE DISCLOSURE: REGULATION IN SEARCH OF A PURPOSE. By Homer Kripke. New York: Law & Business, Inc./Harcourt Brace Jovanovich, Publishers, 1979. Pp. xxiii, 368, Price $29.00.

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Following Professor Homer Kripke's stinging dissent from the report of the SEC's Advisory Committee on Corporate Disclosure,[1] further exposition and expansion of his views were eagerly awaited by many. Publication of *The SEC and Corporate Disclosure: Regulation in Search of a Purpose* [2] must be welcomed by those who share his concerns. The work offers a thorough examination of the corporate disclosure activities of the SEC by one who has spent the bulk of a long and distinguished career in the analysis of the securities laws from both an academic and a practical perspective. In large measure, the conclusion of his inquiry must be seen as frustration and disappointment with the current disclosure practices of the Commission.

Professor Kripke presents four central themes. First, he argues that the SEC, or its staff, has developed its own internal sense of the purpose to be served by corporate disclosure and, disregarding the statutory limits on its jurisdiction, has been overly zealous in attempting to achieve that self-defined purpose. He argues persuasively that the Commission's staff has come to view firm-oriented, historical information of the sort required to be disclosed by schedule A to the Securities Act of 1933 [3] as the critical element in any investment decision. He then asserts that the staff not only operates under this misconception of what is important, but also defends it unduly in efforts to make corporate issuers, and those who trade in securities, abide closely by the SEC's views, whether or not those views have any practical importance to investment

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[1] ADVISORY COMM. ON CORPORATE DISCLOSURE, 95TH CONG., 1ST SESS., REPORT OF THE ADVISORY COMM. ON CORPORATE DISCLOSURE TO THE SECURITIES AND EXCHANGE COMMISSION (Comm. Print 1977). Professor Kripke's dissent appears in volume 1 at D-49 to D-56.

[2] H. KRIPKE, THE SEC AND CORPORATE DISCLOSURE: REGULATION IN SEARCH OF A PURPOSE (1979).

[3] 15 U.S.C. § 77aa (1976).

decisions or firm foundation in the securities laws. Professor Kripke demonstrates forcefully that, with some surprising, but relatively limited, support from the courts, the Commission has tended to adopt and adhere tenaciously to quite attenuated interpretations of statutory language in order to enforce policy decisions often reached without sufficient basis.

To take a minor but perhaps useful example, Professor Kripke points out that, under section 15(b)(4) of the Securities Exchange Act of 1934,[4] the Commission may revoke or suspend the registration of a broker-dealer who "willfully" makes a false or misleading statement or omission in an application or report to the Commission.[5] But the SEC has quite clearly, and fairly successfully, established the view that "willfully" means nothing more than that the actor was aware of his actions and imposes no requirement of knowledge of impropriety.[6] Under that view, one "willfully" makes a false statement if he willingly makes a statement that in fact is untrue, regardless whether he knew or even could have known that it was untrue or that anyone would rely upon it. That point was made manifest to me by the Commission staff in a recent proceeding involving a broker-dealer. In discussions of a potential consent order to be executed by my client, the staff advised that it would take the position that my client had violated the law and could be sanctioned—even though the staff was not sure that it could develop sufficient facts to make a finding of gross negligence or of scienter, but could "only" find a "willful" violation. It is all very well for Humpty Dumpty to take the view that a word "means just what I choose it to mean—neither more nor less," [7] but certainly something better is to be expected of a regulatory agency with the deserved prestige of the SEC.[8] Professor Kripke accurately observes that such a view is symptomatic of the extent to which the staff of the SEC has been infected with zealotry in attacking practices that, for one reason or another, it has determined to be improper. And too often, the determination of impropriety is reached without legislative or judicial sanction.

In his second theme, Professor Kripke makes the point that the SEC has given too little attention to the kind of information that

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[4] *Id.* § 78o(b)(4).

[5] H. KRIPKE, *supra* note 2, at 51-52.

[6] *Id.* 52.

[7] Carroll, *Through the Looking Glass and What Alice Found There,* in THE ANNOTATED ALICE 269 (M. Gardner ed. 1960).

[8] In fairness to the Commission, it must be observed that its definition of "willful," though dubious, has support in the cases. *See, e.g.,* Tager v. SEC, 344 F.2d 5, 8 (2d Cir. 1965).

investors actually desire and has not adequately considered whether and to what extent market forces alone can make available the truly important information concerning an issuer of securities. Fearful of criticism from unsuccessful investors, the Commission has assumed a defensive posture, transforming "the prospectus into a pessimistic litany and [excluding] unverifiable material, particularly forecasts and other estimates."[9] Professor Kripke argues persuasively, for example, that the SEC's recent and limited acceptance of projections in offering documents should have occurred years ago—as he was himself arguing then[10]—because this is precisely the sort of information that an investor can use.[11] Furthermore, there are many types of market information far more significant than that oriented toward the particular issuer, and the SEC has given extremely little attention to the question how to ensure that such information—relating, for instance, to industrywide economic analyses—is transmitted to the investor. Although he, and others, took hope in the early days of the Advisory Committee that it would analyze thoroughly the true utility of the present mandatory disclosure system, he finds that the apparent need for reexamination was ignored. He concludes that the SEC, now with the blessing of the Advisory Committee, has allowed itself to be locked into a conceptual framework of disclosure that is far too limited and far too removed from the actual needs of the investor in the market. As enforced by the Commission, the present disclosure system tends to ignore that the investor typically does not decide *whether* to invest, but rather decides *in what* to invest. Similarly, the present disclosure system ignores, at least in Professor Kripke's view, the role of investment analysis, the implications of random walk/efficient market theories, and, in general, the work of the economists who have examined the securities analysis field during the past several years.

Third, Professor Kripke argues that the SEC has abdicated what may be its most important function, the regulation of matters of accounting, by deferring to the accounting profession to establish appropriate procedures. It is certainly true that financial statements represent, for a reasonable investor, one of the most significant sources of information about a company. Particularly in recent years, however, there have been substantial disputes about

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[9] H. KRIPKE, *supra* note 2, at 16.

[10] *See, e.g.*, Kripke, *The SEC, The Accountants, Some Myths and Some Realities*, 45 N.Y.U. L. REV. 1151, 1197-1201 (1970).

[11] H. KRIPKE, *supra* note 2, at 17.

the proper method of preparing and presenting various types of information in financial statements. And the SEC has preferred to take a rear seat in these discussions and to ask the accounting profession itself to determine what is appropriate. Notwithstanding his general dissatisfaction with the recent pattern of activities of the SEC, and perhaps because of his unyielding confidence in the Commission's beneficial potential, Professor Kripke presents a forceful case (although not for the first time) [12] that this is an area in which the SEC should be at the forefront, making decisions to improve accounting disclosure, rather than leaving the matter to the accounting profession.

Finally, Professor Kripke argues that the SEC, as is perhaps normal for a bureaucracy with a wide mandate, has taken an overly broad view of the jurisdiction conferred upon it by the Congress. Specifically, the SEC has created limitations on the statutory exemptions from registration under the 1933 Act that may or may not be sound policy, but that cannot be legitimated under the language of the statute.[13] For example, the various restrictions that have been imposed on unregistered resales of securities by persons who acquired the securities in a private placement—relating to such matters as the timing, volume, and method of sale—are simply not to be found in, or even fairly inferred from, any of the provisions of the Securities Act of 1933.[14] However wise the policy basis for those limitations (wisdom which Professor Kripke does not necessarily concede), the statute cannot justify their imposition by the SEC.

Of similar nature, although occurring after the publication of Professor Kripke's book, are the SEC's new rules regarding tender offers.[15] In the release adopting those rules, the Commission freely admits that some of their provisions are inconsistent with the anti-takeover laws of some states and takes the position that, as a result, the state laws have been preempted by the SEC's exercise of jurisdiction.[16] This notion of agency preemption of

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[12] *See* Kripke, *supra* note 10, at 1175-1204.

[13] H. KRIPKE, *supra* note 2, at 232-65.

[14] *Id.* 243-65.

[15] 17 C.F.R. pts. 230, 240 (1980).

[16] Securities Exchange Act Release No. 34-16384, 44 Fed. Reg. 70,326, 70,329-30 (1979). The Commission's position has already come under challenge. *See* Ohio v. SEC, No. C-2-80-111 (S.D. Ohio, filed Feb. 15, 1980). The complaint of the Ohio Commissioner of Securities, seeking a declaration that the Ohio Tender Offer Act, OHIO REV. CODE ANN. § 1707.041 (Page Supp. 1979), is not invalidated by the federal tender offer regulations, appears at [Current Volume] FED. SEC. L. REP. (CCH) ¶ 97,286 (1980).

state law seems rather novel. Although I do not purport here to examine the constitutional issues in any depth, I must question this assertion that an administrative agency has the clear authority to preempt state law. Certainly, if an agency concludes that it has such authority, it has an obligation to make a clear case for its view and to do more than merely assert it. Nonetheless, under the new rules, persons involved in some tender offers will have to violate either federal law or state law; until the matter has been judicially resolved, at least some tender offerors will be forced to act at considerable peril.

Professor Kripke's book has much to commend it, and, indeed, it is difficult to disagree with most of his views. As is typical of him, he thoroughly substantiates his arguments and evenhandedly examines them. In the matter of the Commission's delegation of authority to accounting boards, Professor Kripke is of course the acknowledged expert. And because his exploration of this issue probably represents the most important of the four themes just summarized, it is somewhat unfair not to dwell on it further. Yet a reviewer invariably focuses on the issue with which he has some disagreement. Thus, I shall concentrate primarily on Professor Kripke's discussion of the propriety and scope of corporate disclosure requirements. That concentration should not cause the reader to overlook or underestimate Professor Kripke's powerful analysis of the accounting issues. The only respects in which I might question his views about those matters relate to the surprising extent of his confidence in the SEC, and his related lack of confidence in the professionalism of the accounting authorities.

In two important respects, this work fails, I think, to consider fully defenses that can be raised for the Commission's current approach to disclosure practices. Although I do not necessarily believe that those defenses are wholly persuasive, they are worthy of consideration.

The first defense, which Professor Kripke acknowledges to some extent in the book itself,[17] is that SEC-mandated disclosure in its present form is meaningful and beneficial for smaller issuers that do not have a broad following among securities analysts. Professor Kripke may be correct, although I am not entirely convinced, that the current system performs little or no beneficial function in the case of the large corporation that is carefully watched by analysts and enjoys a broad trading market. For those companies, the standard research reports of the analysts doubtless

[17] H. KRIPKE, *supra* note 2, at 119, 126, 139.

tend to be far more useful and more widely circulated than the mandated disclosure documents filed with the Commission. (There must, of course, always be some reasonable question about how much information would be available to the analysts absent the SEC mandate.) But thousands of smaller companies whose securities are traded in the public markets are not followed by analysts and are not the subject of frequent research reports. Certainly securities of these issuers account for a relatively small part of the trading market, and one might well argue that they alone cannot warrant so pervasive a regulatory scheme as that presently administered by the SEC. Alternatively, an argument based on precisely the opposite premise is currently popular—that small issuers are critical to the growth of the nation, cannot as easily afford SEC-mandated disclosure, and should therefore be relieved of a substantial part of the burden of that disclosure. Whichever premise one accepts, it must be conceded that the market is not particularly efficient as to underpublicized securities, and in many instances the disclosure mandated by the SEC is likely to be the only information available for such companies. It is not implausible to suggest, particularly with regard to small issuers, that currently mandated disclosure performs precisely the valuable social function for which it was designed—allowing our securities markets to resemble more closely the perfect-knowledge assumption of economists.

Furthermore, although Professor Kripke argues that market forces themselves would bring forth much disclosure, some evidence, including the "going private" phenomenon of recent years, compels the conclusion that contrary forces do exist in some circumstances. Many issuers—probably the majority—depend upon the securities markets as a source of future capital, in conjunction with employee compensation programs, or for other purposes. The reluctance of most issuers to make projections even after the SEC's adoption of "safe-harbor" provisions [18] suggests, however, that market forces may cause issuers to amplify what they are required to file with the SEC, but may not be sufficient to generate disclosure in the first instance. And we cannot ignore that some issuers have decided to withdraw from the public securities markets. Presumably, for those issuers at least, very little information would be forthcoming without the compulsion of the securities laws.

This is not to say that Professor Kripke is in error. Certainly he does not advocate the complete withdrawal of the SEC from the

[18] *See* Jansson, *Will Earnings Forecasts Ever Get Off Dead Center?*, INSTITUTIONAL INVESTOR, Feb. 1980, at 121.

disclosure process, but rather argues for a fundamental reexamination of the type of disclosure required and of the role of the SEC as the first-resort disclosure recipient. Moreover, some concerns mentioned above may well be insufficient to justify the total cost of any broad-based disclosure system. But it would be a mistake to revise the present system substantially with an eye only upon those issuers who enjoy an active trading market and a concomitant, broad following by analysts and who appear inclined to initiate significant disclosure without the pressure of the securities laws. The many small issuers about whom documents filed with the Commission provide the only source of information may not simply be ignored, even if the trading in their securities represents but a small fraction of total market volume.

Professor Kripke's arguments must also be examined in light of the actual function of disclosure. Arguably, a substantial part of the purpose of SEC-mandated disclosure is not to make information available to the public investor, but rather is to affect business behavior generally. Certainly that was not the primary purpose for adoption of the 1933 and 1934 Acts. Quite clearly, they were intended to rekindle confidence in securities markets then in a shambles. The method chosen was to ensure the full and fair transmission of all relevant information—as then perceived—to potential investors in order that they might make more reasonable evaluations in their investment decisions and have the same ability to use information as insiders and others. At least part of the function of disclosure as originally envisioned, and certainly as presently mandated, is, however, responsive to Justice Brandeis's too-often-quoted remark that sunlight is "the best of disinfectants; electric light the most efficient policeman." [19]

Anyone who has represented corporate clients in connection with disclosure matters has seen the disclosure requirement affect corporate behavior directly. Some years ago, for example, I represented a corporation proposing to issue stock to the public for the first time. In our examination of the corporate records, we discovered some respects in which the corporation's agreements with its distributors might have violated the antitrust laws. Disclosure of the possible violations in the prospectus was obviously required, and as a direct consequence of that disclosure the corporation revised its distribution agreements to eliminate any question of illegality under the antitrust laws. Similarly, every securities lawyer

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[19] L. BRANDEIS, OTHER PEOPLE'S MONEY AND HOW THE BANKERS USE IT 62 (1914).

has encountered innumerable instances in which proposed transactions between a corporation and its management were canceled when the latter learned that the nature and amount involved would have to be disclosed to the public in a 1934 Act filing. Certainly, use of the disclosure mechanism to improve corporate or managerial behavior was not the primary purpose for adoption of the Acts. And just as certainly, recent reliance on the policing capacity of disclosure to justify management "morality" disclosure—obligatory disclosure of perfectly legal but "sensitive" payments made in connection with procurement of foreign contracts and the like—has in some instances been excessive, with potentially unfortunate consequences the extent of which has not yet been fully appreciated.[20] But that this is a real and forceful aspect of securities law disclosure obligations cannot be ignored.

Let us dwell a bit longer on the capacity to control behavior as a justification for the disclosure process because, although it is barely discussed in Professor Kripke's work, it may be the best defense of the current process. That is not to say that regulation of behavior is necessarily good, nor that it is sufficient reason to retain the mechanism in its present form. Clearly, it is no justification at all for failing to improve the process to provide the sort of disclosure that Professor Kripke sees as necessary in the modern environment. Nonetheless, it has become an intrinsic part of the function of disclosure in today's corporate world, and so it must be reckoned with. Professor Kripke's book may fairly be criticized for only indirectly examining this aspect of the function of disclosure—but I should hasten to add that, in my view, such an examination would only underscore the conclusions he has reached.

If obligatory disclosure really promised no more than the conveyance of information—if the SEC were actually to permit any conduct as long as it was properly disclosed—then the recent debate over "federal incorporation" might never have materialized. That debate, triggered or at least substantially magnified by Professor Cary,[21] seems to have three camps. One, generally characterized as the "extreme left" (although I believe mistakenly so), appears to urge adoption of a federal incorporation statute to replace the state corporation laws. Its members seem generally to believe that the multiplicity of state laws, coupled with the corporation's freedom

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[20] *See* Lorne, *The Impending Raid on Your Private Life*, WHARTON MAGAZINE, Winter, 1979, at 41.

[21] *See* Cary, *Federalism and Corporate Law: Reflections Upon Delaware*, 83 YALE L.J. 663 (1974).

to incorporate under any law it chooses and to change the jurisdiction of its incorporation when expedient, is senseless. Underlying this argument, more or less explicitly, is typically the view that the states have not adequately controlled corporations and have thereby forfeited their right to grant corporate charters. This camp apparently assumes that federal incorporation would necessarily give the SEC substantive power over corporate behavior and eliminate the charade of using the disclosure mechanism.

For example, when the phenomenon of "going private" was young, private litigants asserted—generally successfully until the Supreme Court heard the issues in *Sante Fe Industries, Inc. v. Green*[22]—that the very process of going private and "squeezing out" minority shareholders was some sort of deceptive or fraudulent conduct that, regardless of the extent of disclosure, should be prohibited by the federal securities laws. When the Supreme Court decided *Santa Fe* and restricted private litigants to whatever remedies they might obtain under applicable state law, the SEC proposed a rather broad rule, under the guise of disclosure, that would have substantially restricted the ability to go private.[23] After numerous objections to that proposal, a rule was adopted that is less extreme but still creates substantial disclosure impediments for a corporation desiring to go private.[24] This seems quite clearly the sort of case that the proponents of a federal incorporation statute would allow the SEC to regulate directly. Those proponents apparently assume that, if there were a federal incorporation statute, the SEC and private litigants could then move directly to prevent these perceived abuses, without being forced to frame their objections in a manner that invokes a statute fundamentally oriented toward disclosure.[25]

A second camp, generally perceived as less extreme, urges not federal incorporation, but rather a federal "minimum standards" test. Such an approach, presumably patterned after statutes such as the California "pseudo-foreign corporation" statute,[26] would require

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[22] 430 U.S. 462 (1977).

[23] Proposed Rule—Going Private Transactions by Public Companies or Their Affiliates, 42 Fed. Reg. 60,090, 60,101 (1977).

[24] Rule 13e-3, 44 Fed. Reg. 46,736, 46,741 (1979) (to be codified at 17 C.F.R. § 240.13e-3).

[25] Some support for federal incorporation is inevitably provided by the questionable approach adopted in California, which seeks to apply certain portions of its corporations code to corporations incorporated in other jurisdictions, notwithstanding the potential for direct conflict with the law of the incorporating jurisdiction. *See* CAL. CORP. CODE § 2115 (West Supp. 1980).

[26] *Id.*

that all corporations adhere to some minimum standards in matters of fundamental importance—at least as identified by the supporters of this notion—and that more mundane matters be left to separate state regulation. The third group, of course, supports retention of the status quo, allowing all substantive matters of internal corporate affairs to be regulated by the states.

And yet, most of the rhetoric surrounding these disputes seems misguided. Plainly, it makes little sense for a large corporate body to be able to choose which of fifty different corporation laws will be applied to it. Why should a corporation headquartered in Los Angeles with sales to all fifty states as well as the District of Columbia, Puerto Rico, and foreign nations, with offices scattered throughout the country and the world, with thousands of employees, have the right to select from among the fifty sets of laws that which will govern its internal operations and its relationships with its shareholders? Why should a corporation headquartered in Wyoming with ten shareholders, five employees, and no sales outside the city of Rawlins be allowed to decide that its affairs will be governed by laws of the state of Maryland? Why should the filing of a piece of paper called the "Articles of Incorporation" or "Certificate of Incorporation" in one state rather than another lead to different conclusions about what matters must be submitted to a vote by shareholders, what percentage of votes is required for approval, and the like? On its face, that notion makes no sense, and I do not believe that the defenders of the present system (except Delaware and the few other states that are popular states of incorporation) can seriously argue for the sanity of that process.

At the same time, however, why would movement toward federal incorporation necessarily produce any increase in the SEC's jurisdiction? The filing of documents of incorporation in the states is currently a purely ministerial function. The states do not enforce these corporation laws. Although virtually all states have laws regulating securities—most of them more directly regulatory than the federal securities laws—few, if any, of the state securities administrators are charged with direct enforcement of the corporation laws. If a corporation violates the corporation law, challenging that violation is invariably left to individual plaintiffs. The state attorney general may, under unusual circumstances, be authorized to bring an action, but such actions are extremely rare. One must therefore question the assumption that federal incorporation carries with it an expansion of the jurisdiction of the SEC. Why could not a federal incorporation statute require filing

of articles of incorporation in the national archives without enlarging the SEC's jurisdiction one iota? Yet the debate rages on, with the sensible notion of federal incorporation inextricably linked to the objectionable (to many) notion of expansion of SEC authority. And, as Professor Kripke notes,[27] this linkage apparently has developed solely because the SEC has so zealously advanced its arguments for disclosure that few people seem capable of considering federal incorporation without assuming a substantial increase of SEC enforcement power.

This brief discussion may seem to have strayed rather far from the topic of Professor Kripke's book. But in a curious way, it highlights much of the thrust of the work. For if Professor Kripke's views are accepted, then much of the modern disclosure mechanism may be seen to serve little useful purpose other than to regulate behavior by those who must disclose. If that disclosure process has given the SEC license to create new substantive norms for behavior, then the system may not merely be faulty, but may be affirmatively harmful.

Consider again the "sensitive payment" issue and the SEC's position, of which Professor Kripke seems clearly to disapprove. Ignoring for the moment the passage of the Foreign Corrupt Practices Act of 1977,[28] and with it the congressional ratification of the SEC's views, the Commission's accomplishments in the "sensitive payment" cases are remarkable. Although this is not the place for an examination of either the propriety of the SEC's views or their implications for the future, it may be accepted, for purposes of this discussion, that for decades multinational corporations in this country made payments in foreign countries to agents who assisted them in obtaining important contracts. Let it be assumed —as was clearly true in some of those cases—that the agents in turn made payments to government officials, which were not illegal under the laws of the foreign country, and were actually condoned because of historical practice. Furthermore, American-based multinational corporations were competing with foreign corporations; which were following the same procedures while competing for the same contracts. In the rash of new morality that followed Watergate, the SEC decided that those practices were improper and that, whether or not legal in the foreign countries, they were matters requiring disclosure. Indeed, even if the amounts and contracts

[27] *E.g.*, H. KRIPKE, *supra* note 2, at 37-39.

[28] Pub. L. No. 95-213, 91 Stat. 1494 (codified in scattered sections of 15 U.S.C. (1976)).

involved were economically immaterial, these practices had to be disclosed because they reflected upon the "morality of management." The SEC's position was simply that "shareholders are entitled to know that people of this kind are running the corporation." (It is not irrelevant that at least one acquaintance of mine suggested that, given the environment in many foreign countries, he would be more concerned if management were unwilling to make such payments.) Through this rather tangential link to the disclosure mechanism, the SEC obtained significant results, primarily through consent decrees, and created havoc for many multinationals. Although the Commission was able to convince trial courts that its concerns were not beyond its jurisdiction,[29] its approach has not yet been approved by the Supreme Court, which has generally been hostile to the SEC's recent attempts to expand its jurisdiction. Nonetheless, it occurred; the SEC was in fact victorious and had a substantial impact on the manner in which multinational corporations conduct their business—all of this on the basis of a rather attenuated relationship to a principle of disclosure.

Issues such as that of foreign payments undoubtedly are exciting, enervating, and headline-grabbing. The SEC's subsequent attack on management perquisites was of a similar nature. But if, in administering its disclosure statutes, the SEC focuses upon such matters as foreign payments, management perquisites, protection of minority shareholders from the presumed outrage of going private, and the like, it is no wonder that the SEC has failed to lead any movement toward the kind of disclosure that Professor Kripke so forcefully argues is important to investors. For one can rationally infer from recent history that the Commission's concern in administering the disclosure statutes, for the most part, is no longer with providing useful information to potential investors, but rather is with protecting substantive rights of investors, and primarily minority shareholders, against what it sees as wrongful corporate behavior.

I do not presume here to stand in judgment of the propriety of the SEC's views. Certainly, a large element of unfairness was present in most of the cases that have been brought or supported by the SEC. Corporate insiders were improperly taking advantage of the corporation and concealing that fact from the corporate owners—though often not in ways that materially affected the financial statements of the enterprises. My point is simply the juris-

[29] *See* SEC v. Jos. Schlitz Brewing Co., 452 F. Supp. 824 (E.D. Wis. 1978).

dictional one. Although the SEC may have decided that, together with the federal courts, it has the power to right all wrongs,[30] that power is nowhere to be found in the securities laws. The orientation of the SEC, as Professor Kripke would have it, should be directed toward providing investors with useful corporate information from which to make reasonable investment decisions, and not toward protecting the public from corporate wrongdoing of whatever nature. I do not suggest that the SEC should be less than diligent in its enforcement activities. I do, however, suggest that all of the SEC's activities should be coordinated with the purposes for which the securities laws were adopted. Insofar as the securities laws affect securities exchanges, securities institutions, and securities professionals, they are in fact designed as regulatory statutes and have properly been so approached. Those activities of the SEC are beyond the scope of both Professor Kripke's book and this review. The securities laws are not, however, designed to regulate corporate conduct in general.

Although the report of the Advisory Committee on Corporate Disclosure was disappointing to Professor Kripke and indeed provided much of the impetus for his important book, it was perhaps a significant step. In many respects, the report may be seen at least as an attempt to focus upon the true disclosure issues and the true purpose of the Commission. Professor Kripke's work, a powerful and thoughtful document, will, I hope, spur the Commission to recognize that the Advisory Committee's task remains unfinished and cause it to direct more of its attention to those fundamental issues.

[30] See *Solon Agrees to Pay $900,000 That SEC Says It Owes Lessors*, Wall St. J., Apr. 26, 1977, at 3, col. 5, describing a rather remarkable remedy obtained pursuant to the power of the federal courts to "right all wrongs."