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Mickey, Can You Spare a Dime - Disneywar, Executive Compensation, Corporate Governance, and Business Law Pedagogy 2007 Survey of Books Related to the Law: Review: Corporate Law

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MICKEY, CAN YOU SPARE A DIME? *DISNEYWAR*, EXECUTIVE COMPENSATION, CORPORATE GOVERNANCE, AND BUSINESS LAW PEDAGOGY

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DISNEYWAR. By *James Stewart*. New York: Simon & Schuster. 2005. Pp. xi, 534. $29.95.

INTRODUCTION

American business executives are under fire. Recent, notorious difficulties at companies such as the Enron Corporation brought attention to these individuals. Notwithstanding the conclusion of the trials of some of those top executives,[1] skepticism remains about the inner workings of U.S. corporations and the quality of corporate governance.

Drawing special scrutiny from some quarters is the compensation granted to corporate officers and directors.[2] For instance, the timing of certain stock option grants, a key component of some compensation packages, raised ire because of those options' supposed backdating and fortuitous proximity to increases in share prices.[3] Further, some questioned more generally the high level of executive compensation.[4] Such concerns arose at the same time that the United States Securities and Exchange Commission ("SEC") promulgated new rules related to executive compensation[5] that

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1. *See, e.g.*, Mary Flood et al. *Guilty! Guilty! Verdict Will Mean Prison for Ex-Enron Chiefs*, HOUS. CHRON., May 25, 2006 (extra edition), at A1.

2. *See, e.g.*, LUCIAN BEBCHUK & JESSE FRIED, PAY WITHOUT PERFORMANCE (2004).

3. Jeremy Grant, *SEC May Clarify Rules on Backdating Stock Options*, FIN. TIMES, June 10, 2006, at 9.

4. Diane Brady, *No Hair Shirts, But Still . . .*, BUS. WK., May 1, 2006, at 36.

5. *E.g.*, Executive Compensation and Related Person Disclosure, Securities Act Release No. 8732A; Exchange Act Release No. 54,302A; Investment Company Act Release No. 27,444A; File No. S7-03-06 (Aug. 29, 2006), 71 Fed. Reg. 53,158 (Sept. 8, 2006); *see also* Press Release, Securities and Exchange Commission, SEC Votes to Adopt Changes to Disclosure Requirements Concerning Executive Compensation and Related Matters (July 26, 2006) (announcing rule changes), *available at* http://www.sec.gov/news/press/2006/2006-123.html; Executive Compensation and Related Party Disclosure, Securities Act Release No. 8655; Exchange Act Release No.

leave some pondering whether additional action is necessary.[6] Ultimately, issues related to compensation raise a more fundamental question—are directors and officers running corporations for their own benefit or for the benefit of shareholders?

Although recent corporate scandals attract special attention to fundamental corporate governance issues, long before the recent allegations of executive excesses, corporate governance controversies arose at one of America's supposedly most wholesome companies, the Walt Disney Company. James B. Stewart's[7] *DisneyWar* describes this strife in the company that Walt built. Although Stewart's book was written for a wide audience and has been especially heralded in the business literature,[8] legal scholars similarly should note the work's significance.

DisneyWar tells the story of the corporation during the long tenure of the company's former chairman and chief executive officer, Michael Eisner. In studying that tenure, Stewart provides great insight into corporate governance at the company. He does so through examples of critical events over a multi-decade time horizon, as Eisner's tenure as CEO lasted from 1984 until 2005.[9] For instance, Stewart describes circumstances surrounding the hiring and termination of a variety of Disney executives and includes details about those executives' compensation. Importantly, he also describes the role of shareholders and shareholder rights at the company.

The book not only offers insight into the world of the Hollywood glitterati, but illustrates the significance of a chairman and CEO to the running of a modern corporation as well as his relationship to shareholders and those the company employs. Of particular interest in the Disney narrative is the termination of former Disney executive and supposed Eisner favorite Michael Ovitz, which offers a primer on management crises and issues related to executive compensation, including benefits packages and severance awarded to departing employees. Also fascinating is Stewart's account of the events surrounding the resignation of Roy Disney, Disney founder Walt Disney's nephew and former chairman of Walt Disney Animation, from the company. After resigning his position, Roy Disney helped lead a Disney shareholder revolt that arguably contributed to Eisner's departure from the company and that continues to resonate in discussions of corporate governance reform.

Not surprisingly, the book's tale of recent years at the Walt Disney Company directly links to a legal narrative. For example, the Ovitz depar-

53,185; Investment Company Act Release No. 27,218; File No. S7-03-06 (Jan. 27, 2006), 71 Fed. Reg. 6542 (Feb. 8, 2006) (proposing rule changes).

6. *E.g.* Kara Scannell & Joann S. Lublin, *SEC Issues Rules on Executive Pay, Options Granted*, WALL ST. J., July 27, 2006, at C1 (noting "[s]ome groups were hoping the SEC would go further. . . .").

7. Bloomberg Professor of Business Journalism, Columbia University Graduate School of Journalism.

8. *See, e.g.*, Ronald Grover, *Emperor Eisner*, BUS. WK., Feb. 28, 2005, at 24.

9. Bloomberg News, *Walt Disney Co.: Eisner Makes Clean Break, Resigns from Board of Directors*, CHI. TRIB., Oct. 7, 2005, at C2.

ture underlies years of shareholder derivative litigation that will be familiar to many corporate law students.[10] And Roy Disney's departure and other problems at the company became a catalyst for some shareholders' rejection of the corporate management team through the use of traditional corporate law mechanisms, such as the annual meeting. Accordingly, in reviewing the book for this essay, I explain why *DisneyWar* can be particularly useful for discussion in business law classes and how the book offers more general insights into corporate law policy-making.

In Part I, I proffer the significance of an interdisciplinary approach to business law teaching, especially given the current emphasis on such an approach in business law scholarship. I observe that interdisciplinary teaching tools are more effective when those tools utilize the power of narrative to tell students a comprehensible story about business law issues. Part II extracts from *DisneyWar* specific examples that might be used in the classroom with respect to executive compensation and shareholder rights. Finally, in Part III, I conclude with an explanation of how the utility of *DisneyWar* can extend beyond classrooms to assist corporate law scholars and policy-makers in formulating corporate law policy, particularly in the current corporate governance environment.

I. A Case Study of Studied Cases

Effective courses in the business law curriculum must venture beyond solely teaching legal principles. Many law students possess little experience with businesses, although their practices after graduation often will focus on transactions or disputes involving businesses. The business law curriculum should be transformed to train students better for this type of practice. More traditional legal education emphasizes the study of court cases, yet absent a basic sense of how businesses actually function, cases on corporate governance can be unintelligible for many students. The way to engage students in discussions of how businesses actually operate is by telling stories about how real businesses work—and those stories may be found in nontraditional teaching materials, such as *DisneyWar*, drawn from the business arena rather than the legal world.

A. *Utilizing the Interdisciplinary Model of Corporate Law Scholarship in Teaching*

One of the defining characteristics of modern corporate law scholarship is the utilization of an interdisciplinary approach.[11] Numerous scholars are working vigorously to eliminate barriers between law, business, and economics departments at universities. This goes beyond scholars simply paying lip service to work in other disciplines to include active participation

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10. *See infra* note 31.

11. *See* Roberta Romano, *After the Revolution in Corporate Law*, 55 J. LEGAL EDUC. 342 (2005).

in joint scholarly projects. A casual observation of new articles in academic journals or working papers on research networks plainly reveals these efforts.[12] To facilitate such efforts, professional organizations have arisen to formalize the relationship between scholars in different disciplines.[13]

Of course, this spirit of cooperation is hardly new. Interdisciplinary research is part of a broader tradition in the legal academy. Indeed, I previously observed the significance of such research in the development of the modern system of legal education, particularly as that system prepares lawyers to be future leaders and agents of social change.[14] The provision of interdisciplinary materials to business law students is entirely consistent with this tradition—including the introduction of journalistic-style case studies of businesses, such as *DisneyWar*.[15]

Given the general significance of interdisciplinary research to corporate law, it is particularly important to encourage students at an early stage to seek out such materials as they approach legal problems. It is insufficient for professors merely to recite to students the results of empirical research papers or the contents of other related materials. Those students must familiarize themselves directly with such materials. When they join the bar, those same students' personal consultation of these types of materials could be critical to the provision of effective counsel; indeed, such consultation might be viewed philosophically as a professional obligation.[16] This results from the fact that such materials likely will inform both the creation of new legal policies and the arguments utilized in the litigation of existing policies that affect legal clients. Moreover, students sometimes fail to realize that good business lawyering involves the provision of the type of counsel that can only be achieved through a deep understanding of clients' business models.[17] Such an understanding requires willingness to study nontraditional and initially unfamiliar sources of information on businesses. *DisneyWar* represents an example of such an information source that, due to its direct,

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12. *See, e.g.*, Guolin Jiang et al., *Market Manipulation: A Comprehensive Study of Stock Pools*, 77 J. FIN. ECON. 147 (2005); Marilyn F. Johnson et al., In re Silicon Graphics Inc.*: Shareholder Wealth Effects Resulting from the Interpretation of the Private Securities Litigation Reform Act's Pleading Standard*, 73 S. CAL. L. REV. 773 (2000); Adam Pritchard et al., *Do the Merits Matter More? The Impact of the Private Securities Litigation Reform Act*, J.L. ECON. & ORG. (forthcoming), *available at* http://ssrn.com/abstract=883684.

13. For example, the American Law and Economics Association, founded in 1991 and which includes practicing lawyers, legal academics, and economists among its membership, "is dedicated to the advancement of economic understanding of law and related areas of public policy and regulation." Welcome to ALEA, http://www.amlecon.org/assoc.html (last visited Aug. 17, 2006).

14. Kenneth M. Rosen, *Lessons on Lawyers, Democracy, and Professional Responsibility*, 19 GEO. J. LEGAL ETHICS 155, 205–10 (2006).

15. *See also* Brian R. Cheffins, *Teaching Corporate Governance*, 19 LEGAL STUD. 515, 515–16, 521–23 (1999) (recommending a combination of academic literature and journalistic items as teaching materials in arguing for inclusion of corporate governance in the United Kingdom's law curriculum).

16. *See* MODEL RULES OF PROF'L CONDUCT R. 1.1 (2004) (providing that "lawyer[s] shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.").

17. *See* Jill Schachner Chanen, *The Strategic Lawyer*, 19 A.B.A. J. 42, 43 (2005).

journalistic style, is accessible even to students without business backgrounds.[18]

B. *Stewart's Cast of Characters*

Rendering *DisneyWar* especially accessible is its use of the narrative form. Stewart essentially weaves his multi-decade description of the Walt Disney Company's inner workings into a story. The potential benefits from the use of storytelling and narratives in legal pedagogy are well documented.[19]

Moreover, the power of narrative as a teaching tool perhaps helps to explain the long-standing use of the case method in law school.[20] To some degree cases offer stories from which students can derive legal principles and ascertain factors that affect the application of the law. Yet as currently deployed by many law school textbooks, these narratives are arguably flawed. Typical textbooks contain excerpts from opinions rather than full judgments and the records that support them. Facts included might be limited to the legally necessary facts, i.e., those most directly linked to a holding and arising during a fairly limited time period. Moreover, textbook authors may abridge cases and the facts contained therein to focus on only some of the legal issues before a court. In essence, students only get part of the story from the cases they read. If law schools are interested in training effective legal counselors, such as transactional lawyers who must craft a legal structure for a deal, it is important to challenge students to look beyond limited legal issues to a bigger, more detailed picture. Business considerations that are not *legally* determinative can be *practically* determinative for clients. It is equally important to expand the time horizon of students' understanding of businesses beyond the limited time period explored in many cases. Critical to businesses' success—and to lawyers helping businesses succeed—is the ability to comprehend the effects of immediate-term actions on a long-term business strategy.

Since no one likely would endorse substantial expansion of the length of existing law school textbooks, the imperfection of case narratives supports the use of supplemental materials for some cases to assist students with filling in the blanks and better comprehending principles presented in a case.[21]

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18. *DisneyWar* is far from the only example. *See, e.g.*, BRYAN BURROUGH & JOHN HELYAR, BARBARIANS AT THE GATE: THE FALL OF RJR NABISCO (1990); ROGER LOWENSTEIN, WHEN GENIUS FAILED: THE RISE AND FALL OF LONG-TERM CAPITAL MANAGEMENT (2000); JAMES B. STEWART, DEN OF THIEVES (1991).

19. *E.g.*, Symposium, *Pedagogy of Narrative*, 40 J. LEGAL EDUC. 1 (1990).

20. *See* Rosen, *supra* note 14, at 202 (indicating early use of the case method). Indeed, the pedagogical use of cases extends to other venues, such as business schools. *See infra* note 23 and accompanying text.

21. The proliferation of volumes in the Foundation Press Law Stories series, which offers background for cases in different subject matter areas, further suggests student demand for additional details related to case narratives. *See* http://www.westacademic.com:80/Professors/FoundationPress/ProductLines.aspx?tab=1 (follow "Law Stories Series" hyperlink) (last visited Aug. 17, 2006).

Interestingly, business professors often employ "case studies" as a pedagogical technique.[22] Law professors might learn from some of the details selected for inclusion in such business case studies as we seek to supplement facts utilized to study legal cases.[23] *DisneyWar* clearly provides a source for such supplemental information, as is further explained in Part II.

The pedagogical power of the use of individuals in a narrative further supports education through narrative. In the best stories, character development accompanies plot development. *DisneyWar* is especially useful for the classroom because of Stewart's careful attention to characters in his narrative, which emphasizes the role of key individuals, particularly Michael Eisner. Utilizing the principles of representative biography employed by Ralph Waldo Emerson, I recently related how telling the stories of individuals involved with legal issues—including reflection on both the positive and negative aspects of these persons—is a useful way to teach professional responsibility issues to law students.[24] The stories of those associated with Disney offer an equally effective way to teach students about business law issues. In the Emersonian spirit, Stewart describes both the successes and failures at Disney during Eisner's tenure as chief executive and chairman. Stewart simultaneously acknowledges Eisner's "extraordinary record of achievement" (p. 529), while reflecting on Eisner's "management failures" that Stewart believes

> include[d] an inability to delegate, a frequent mistrust of subordinates, impulsive and uncritical judgments, his pitting of one executive against another, his disrespect for any hierarchy of authority other than his own, his encouragement of a culture of spying and back-channeling, his frequent failure to acknowledge the achievements of others, and above all, his inability to groom a successor, notwithstanding his designation of Bob Iger as his heir apparent.[25]

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22. Ann Rippin et al., *A Complex Case: Using the Case Study Method to Explore Uncertainty and Ambiguity in Undergraduate Business Education*, 7 TEACHING IN HIGHER EDUC. 429 (2002).

23. For instance, the Harvard Business School utilizes a fascinating case study of the decision by partners at Goldman Sachs to invite partial public ownership of their company through an initial public offering of securities. Importantly, the case study introduces students to an extended time horizon for the firm, starting with its origins in the 1800s. It provides details of the firm's evolving business model, the compensation model related to its prior partnership structure, its governance under different leaders through various significant events, financial data, and its placement in the investment banking industry. With this information, students are invited to evaluate the partners' decision to engage in an IPO. *See* Ashish Nanda, *The Goldman Sachs IPO (A)*, HARV. BUS. SCH. CASE STUDY, No. 9-800-016, (Sept. 18, 2002).

24. *See* Rosen, *supra* note 14, at 220–24.

25. P. 532. Whether one fully agrees with the intensity of Stewart's critique of Eisner is less significant for this essay's purposes than the fact that, in the hundreds of pages leading up to this stated conclusion, he reports on positive and negative incidents involving Eisner and others. This allows readers—including student readers—to draw some of their own conclusions of what works and is appropriate in the world of business. Of further interest, Iger did ultimately succeed Eisner as Disney's chief executive officer. *See* The Walt Disney Company—Management Team, http://corporate.disney.go.com/corporate/management_team.html (last visited Oct. 1, 2006).

Stewart relates the stories of events at Disney with the skill of a Pulitzer Prize-winning journalist combined with the attention to detail befitting a former associate of the law firm of Cravath, Swaine & Moore (p. 6).

II. The Lesson Book: Disney (Business) Tales

Given the value of narratives and individual biographies as potential teaching tools, it is useful to explore some examples of the stories contained in *DisneyWar* that not only inform the book's larger narrative, but also potentially inform the study of a variety of business law issues. Such useful stories, applicable to a wide array of business law courses, occur throughout the book. For example, students of international business transactions may enjoy Stewart's detailed accounts of the trials and tribulations related to expanding Disney's business beyond the company's existing domestic theme parks to include overseas locales like Euro Disney (pp. 126–31, 149). And students interested in mergers and acquisitions with their fingers on the pulse of the entertainment industry may appreciate Stewart's stories of Disney's acquisition of the Weinstein brothers' Miramax Studios and of the ABC television network (pp. 136–37, 203–09). These stories provide further insight into the operation of the business judgment rule and risks often undertaken by businesses. The tales illustrate the difficulties of predicting which entertainment projects should be pursued—not to mention the difficulties of holding management accountable for those predictions, especially when one compares recent movie and television hits and flops with executives' expectations before their release to the public (pp. 115, 142, 485–87). For the purposes of this essay, I will focus on some tales of events and people from *DisneyWar* that relate to the issue of executive compensation and its link to the business judgment rule as well as to the exercise of shareholder power. These examples hardly constitute an exhaustive list of events and people described in *DisneyWar* that might be used in the classroom; instead, they exemplify how the book provides insight into many important corporate governance issues.

A. *Judging Businesses, Business Judgment, and Keeping Quiet as a Mouse*

Executive compensation currently draws attention from various quarters.[26] Examples of purportedly extreme compensation provide tantalizing material for news stories, but more importantly, can ground shareholder litigation and policy-making initiatives. Accordingly, as future business counselors, law students benefit from a greater understanding of the purposes of executive compensation and the rules governing it. The events chronicled in *DisneyWar* provide great insight into these matters.

In one of the most significant court actions in recent years related to executive compensation, Disney shareholders decried the compensation

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26. *See supra* notes 3–5 and accompanying text.

awarded to former Disney president Michael Ovitz upon his departure from the company. This compensation was noteworthy for its size, valued at around $130 million, especially given Ovitz's short and arguably unsuccessful tenure at the company, which saw him serve only fourteen months.[27] Plaintiffs argued that the grant of such compensation violated the fiduciary duties of certain Disney directors and officers.[28]

The Disney shareholder litigation stemming from Ovitz's severance package—litigation that concluded only within the last year—rapidly became a favorite device to teach students about the link between corporate governance law and executive compensation.[29] Ovitz's Hollywood background and rapid rise and fall at Disney make the case especially entertaining for students.[30] The litigation provides a treasure trove of opinions for a business law course to analyze, from those addressing initial motions to dismiss the derivative suit, all the way through to the final Delaware Supreme Court opinion, reviewing the Chancery Court judgment following the actual trial of the case.[31]

The most recent Delaware Supreme Court opinion affirms the Chancery Court's judgment that the defendant directors did not violate their fiduciary obligations in approving Ovitz's compensation and in relation to the no-fault termination that allowed him to secure the benefits of his large severance package.[32] Among the issues the Supreme Court considered was the obstacle posed by the business judgment rule to the plaintiffs' attack on the Disney directors. The rule in Delaware presumes that:

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27. *In re* Walt Disney Co., No. Civ. A15452, 2006 WL 1562466, at *1 (Del. June 8, 2006).

28. *Id.*

29. Along these lines, the publisher's description of the new fifth edition of the popular business organizations casebook, *Corporations and Other Business Associations*, by Charles O'Kelley and Robert Thompson, specifically emphasizes inclusion of the Disney litigation. Aspen Publishers, http://www.aspenpublishers.com/Product.asp?catalog%5Fname=Aspen&category%5Fname=Business+Organizations+%5F%5FBN&product%5Fid=073555790X&Mode=BROWSE&ProductType=T (last visited August 24, 2006).

30. One can identify but few major players in business organizations cases that merit an E!Online special report. *See* Ivor Davis & Sally Ogle Davis, *Michael Ovitz, the Thing that Ate Hollywood Is Back to Eat It Again*, E!ONLINE, http://www.eonline.com/Features/Specials/Ovitz/ (last visited Oct. 1, 2006).

31. The Delaware Supreme Court summarized the litigation and some of the major opinions from before the trial and judgment reviewed by the Delaware Supreme Court:

> The Court of Chancery dismissed the original complaint in 2000. On appeal, this Court affirmed the dismissal in part and reversed it in part, remanding the case to the Court of Chancery and granting the plaintiffs leave to replead. The plaintiffs filed their second amended complaint in January 2002, and in May 2003, the Court of Chancery denied the defendants' motion to dismiss that complaint, ruling that a complete factual record was needed to determine whether the defendant directors had breached their fiduciary duties. After extensive discovery Ovitz moved for summary judgment. That motion was granted in part and denied in part in September 2004. Thereafter, the case was scheduled for trial.

In re Walt Disney Co., No. 411, 2005, 2006 WL 1562466, at *1 n.1 (Del. June 8, 2006) (citations omitted). The trial court's judgment is available at *In re* Walt Disney Co., No. Civ. A. 15452, 2005 WL 2056651 (Del. Ch. Aug. 9, 2005).

32. *See* In re *Walt Disney Co.*, 2006 WL 1562466.

> "in making a business decision the directors of a corporation acted on an informed basis, in good faith, and in the honest belief that the action taken was in the best interests of the company." Those presumptions can be rebutted if the plaintiff shows that the directors breached their fiduciary duty of care or of loyalty or acted in bad faith. If that is shown, the burden then shifts to the director defendants to demonstrate that the challenged act or transaction was entirely fair to the corporation and its shareholders.[33]

The business judgment rule represents a general preference by courts to avoid second-guessing decisions made by corporation directors. In part this may reflect recognition of the expertise and information that the directors possessed in making decisions and a desire to avoid punishment of those decisions rendered with the unfair advantage of twenty-twenty hindsight. Moreover, the rule recognizes the primacy of directors in the corporate governance power structure[34] and the need to avoid chastening directors into avoiding the risky decisions critical to some businesses' success.[35]

Notwithstanding the benefits of the business judgment rule, it remains difficult for some students to accept the failure to punish what might be clearly viewed as *bad decisions* by directors. Accordingly, some students might find frustrating the ultimate resolution of the Disney litigation, claiming that it simply was wrong for Eisner and the Disney directors to put Disney into a situation requiring such a huge payout to Ovitz for so limited a term of employment. Discussion of background information in *DisneyWar* might help students to understand better the difficulty of a court more aggressively intervening in cases such as this one. Moreover, such discussion might reveal alternative solutions available to students to deal proactively with such problems after they enter practice.

On the first point, the frustration of students might come from their focus on the ultimate, disastrous effects of a bad decision rather than on the lengthier time line that would put the decision into an appropriate context. In the abstract, the final effects of triggering the termination provisions of Ovitz's compensation package may be alarming, but *DisneyWar* documents that such lavish executive compensation was hardly unique at Disney. Stewart's multi-decade story of Disney begins to tell the tale of Disney

33. *Id.* at *15 (footnotes omitted).

34. *See* ROBERT CHARLES CLARK, CORPORATE LAW 123 (1986).

35. Risk-taking naturally accompanies the creativity often critical to corporate success. Indeed, creativity is so important to businesses that the question of how businesses might institutionalize creativity has become an important subject for discussion. *See* Paul B. Brown, *The Elusive Goal of Corporate Creativity*, N.Y. TIMES, July 2, 2006, Money and Business, at 6.

Success at creative entertainment companies, such as Disney, may hinge particularly on the public's whims. To remain successful, these companies often must change products and business models to meet current consumer tastes. Change constitutes risk. Sometimes projects fail, and sometimes they succeed. Certainly, that was the case at Disney under Eisner's leadership. His tenure, during which he sought bold, creative choices, yielded diverse results for Disney's bottom line. On Eisner's watch was everything from the problems at Euro Disney to the ushering in of a new wave of animation through Disney's partnership with Pixar on movies such as *Toy Story*. Pp. 74, 124, 126–31, 149, 240–41. Even after Eisner's departure, Disney continues to try to recreate itself. *See* Sean Smith, *The Mice that Roared: How Disney Bosses Bob Iger and Dick Cook Are Redefining the Kingdom, Hollywood and Themselves*, NEWSWEEK, July 31, 2006, at 44.

compensation back in the 1980s, thus describing the climate in which Ovitz's generous compensation package, including its immediate vesting of stock options upon a no-fault termination,[36] was established (p. 212). Eisner's own interest in the granting of stock options as compensation when he became Disney's leader in 1984 set the tone long ago for the extensive use of this type of compensation vehicle at Disney.[37] By the 1990s, in one year, in Stewart's estimation, Eisner's use of stock options and other annual compensation apparently earned him over $200 million, leaving him well ahead of other corporate executives such as the runner-up earner Sandy Weill, the chairman of the Travelers Group, who supposedly earned $52.8 million (p. 124). Although they may not have received Eisner-level compensation, other Disney executives who preceded Ovitz, such as former president and chief operating officer Frank Wells, also received generous compensation that set the bar high for those who followed.[38] Moreover, as Stewart explains, Eisner's fondness for options as compensation found support in contemporary corporate governance theory that sought to better align shareholder and management interests by structuring management compensation in a way that provided incentives for managers to take actions aimed to raise company stock prices (p. 279).

And while his tenure ultimately proved unsuccessful, prior to joining the company Ovitz was no Hollywood bit player. He needed to be recruited to Disney. In describing Ovitz's transition to Disney, Stewart's investigation once again expands the reader's time frame. He notes that much earlier, Eisner and Wells failed to lure Ovitz to Disney when they began their own tenures with the company, but that Eisner continued to solicit Ovitz's interest in joining Disney (p. 171). Ovitz's own agency business, Creative Artists, was quite successful, and his business dealings seemed to be expanding as Eisner sought to tempt Ovitz with the advantages of possibly becoming Disney's president before Ovitz joined the company (pp. 171–73). Eisner's heart attack added further urgency to the task of finding a successor.[39] Although board members did not know Ovitz well, "his credentials seemed impeccable. The overriding impression was that he was an effective businessman with vast creative contacts, 'the most powerful man in Hollywood' " (p. 212).

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36. Brehm v. Eisner, 746 A.2d 244 (Del. 2000) (describing the Ovitz employment agreement).

37. Pp. 54–55 (noting Eisner instructed the lawyer working on his employment agreement, "I don't care about salary .... Just get me all the stock and options that you can"). Ironically, Eisner's then-friend Ovitz apparently was in the room as Eisner worked with the lawyer on his compensation package. P. 55.

38. P. 124 (noting that Wells realized $60.3 million, compared to Eisner's $197 million, on a sale of shares after exercising stock options). Other creative forms of compensation were used at Disney. One contract clause favoring Disney Studios chair Jeffrey Katzenberg entitled him to a potentially very lucrative two percent of profits from his Disney projects and ultimately was considered problematic. Pp. 58, 99–101.

39. P. 194–95. Of course, it is interesting to ponder Ovitz's true negotiating position given his failure to close a deal to become the chairman of Universal at around the same time. Pp. 199–200.

Thus, *DisneyWar* reveals the environment in which the Board acceded to Ovitz's compensation package, which Eisner stressed needed to be generous in light of Ovitz's forfeiting his "extremely lucrative position" at Creative Artists (p. 212). And the Delaware Court had to decide not whether the compensation scheme was a good one, but, rather, whether it indicated such bad faith or failure to exercise a duty of care by directors to merit court intervention.

This is not to endorse Disney's compensation scheme or how the company established Ovitz's pay and severance package. Although Stewart's narrative suggests circumstances that might have made it more difficult for the Delaware Court to legally conclude that Disney's directors absolutely breached a fiduciary obligation, Stewart's story of the adoption of Ovitz's compensation scheme hardly indicates that Disney utilized a methodology for determining Ovitz's compensation that was either admirable or worthy of being employed at other companies.[40] However, given courts' reluctance to interfere with compensation schemes under the business judgment rule, students and others might do best to focus on *DisneyWar*'s story of Ovitz's compensation as instructive concerning things a company might not want to do in hiring executives, setting their compensation, and providing for their possible severance.[41]

In this regard, another aspect of *DisneyWar* merits attention. Stewart goes beyond a simple restatement of the terms of Ovitz's employment to establish the close relationship that existed between Ovitz and Eisner before Ovitz's arrival at Disney.[42] This, in turn, raises questions about the advisability of employing family and friends at a company. An important legal technicality may have lessened emphasis on this issue in the Delaware litigation, as allegations of a breach of the fiduciary duty of loyalty ultimately were not part of the case that went to trial.[43] However, that does not imply that lawyers should ignore such relationships when counseling clients. Such relationships are present at many businesses, and lawyers ignore such relationships—and their propensity to yield questionable compensation schemes

40. Former SEC chairman Harvey Pitt recently spoke of the tendency to conflate the issue of the amount of executive compensation with the methodology for determining the appropriate compensation level. He concluded that compensation decisions are important and that it would be useful to place more emphasis on the methodology used for determining that compensation. Harvey Pitt, *Lessons of the Stock Options Scandal*, FIN. TIMES, June 2, 2006, at 15. Understanding methodology likely is more important, because even outside consultants employed to assist with compensation determinations may not be independent in the fullest sense of the term. *See, e.g.*, Gretchen Morgenson, *Outside Advice on Boss's Pay May Not Be So Independent*, N.Y. TIMES, Apr. 10, 2006, at A1.

41. One could drive this point home by asking students how they might advise board members and executives to develop compensation packages. This exercise in problem solving could confirm that students understand pitfalls to avoid in counseling businesses. It also is consistent with recent moves to introduce additional problem solving into legal pedagogy. *See* Stephanie Francis Ward, *A Push for Problem Solving*, A.B.A. J. EREPORT, May 26, 2006, http://www.abanet.org/journal/ereport/my26harvard.html.

42. Stewart further emphasizes the problem of a lack of true independence for certain Disney executives who also served on the board. Pp. 279–80.

43. *In re* Walt Disney Co., No. 411, 2005, 2006 WL 1562466, at *15 (Del. June 8, 2006).

and other problems—at their peril.[44] This also provides an interesting reference point for classroom discussion about SEC executive compensation rules. The original proposals to reform regulations related to executive compensation drew heated debate.[45] Notwithstanding criticism of some suggestions for reform, proposals for changes continued to flow in from a variety of quarters.[46] Even after the SEC's initial adoption of rule changes, the possibility for additional changes lingered.[47] The rule changes failed to satisfy all interested parties.[48] When assessing such proposals, it is useful to determine how well those proposals address the causes that, in the first instance, led to problems associated with executive compensation.

B. *Shareholders (or Creating a Not So Mickey Mouse Owners' Club)*

Because the shareholder litigation related to Ovitz's departure is so well known among students of corporate law, *DisneyWar* also provides an obvious avenue to explore more generally in the classroom the nature of shareholder power. The question of the appropriate level of shareholder supervision of management fuels some of the most interesting and intense debate over corporate governance rules.[49] Following the recent corporate scandals, discussion intensified over whether shareholders needed to be-

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44. *See* Lucian A. Bebchuk & Jesse M. Fried, *Pay Without Performance: Overview of the Issues*, 30 J. CORP. L. 647 (2005) (noting their work questioning the characterization of executive compensation as being achieved by arms-length bargaining).

45. *See* Rachel McTague, *Executive Pay Disclosure Rules Proposed by SEC Draw Criticism*, 38 BNA SEC. REG. & L. REP. 609 (2006); *see also* Executive Compensation and Related Party Disclosure, Securities Act Release No. 8655; Exchange Act Release No. 53,185; Investment Company Act Release No. 27,218; File No. S7-03-06 (Jan. 27, 2006), 71 Fed. Reg. 6542 (Feb. 8, 2006). Of note, Hollywood was especially vigorous in its criticism as media companies seemed especially concerned about rules that might expand disclosure of notoriously secret pay of employees who are not technically top executives. *See* Matthew Karnitschnnig et al., *Studios Are Furious that SEC Is Curious About Hollywood Pay*, WALL ST. J., Apr. 10, 2006, at B1. This seems consistent with the fact reported by Stewart in his detailed discussion of compensation of various Disney executives that Jeffrey Katzenberg at one point did not want to become a member of the Disney board so as to avoid disclosure of his compensation. P. 145. Interestingly, the SEC backed away from some of its original proposal on nonexecutive compensation when it initially adopted new executive compensation rules. *See* Executive Compensation and Related Person Disclosure, Securities Act Release No. 8732A; Exchange Act Release No. 54,302A; Investment Company Act Release No. 27,444A; File No. S7-03-06 (Aug. 29, 2006), 71 Fed. Reg. 53,158, 53,181–53,183 (Sept. 8, 2006).

46. *See, e.g.*, Phyllis Plitch & Kaja Whitehouse, *Executives' Pay Faces New Tactics*, WALL ST. J., Feb. 27, 2006, at B3.

47. *See* Executive Compensation and Related Person Disclosure, Securities Act Release No. 8732A; Exchange Act Release No. 54,302A; Investment Company Act Release No. 27,444A; File No. S7-03-06 (Aug. 29, 2006), 71 Fed. Reg. 53,158 (Sept. 8, 2006).

48. *See supra* note 6; *see also* Lucian Bebchuk, *Investors Must Have Power, Not Just Figures on Pay*, FIN. TIMES, July 28, 2006, at 13.

49. Not all welcome increased power. *See* Iman Anabtawi, *Some Skepticism About Increasing Shareholder Power*, 53 UCLA L. REV. 561 (2006) (contesting the claim that increased shareholder power necessarily benefits shareholders); Stephen M. Bainbridge, *Response, Director Primacy and Shareholder Disempowerment*, 119 HARV. L. REV. 1735 (2006) (responding to Lucian Bebchuk's proposal to increase shareholder powers); Stephen M. Bainbridge, *The Case for Limited Shareholder Voting Rights*, 53 UCLA L. REV. 601 (2006) (discounting increases to shareholder power based on benefits of director primacy model).

come increasingly involved in the management of a corporation. Shareholder influence on management traditionally is indirect and limited—rather than directly forcing specific company action, shareholders typically elect directors to a company's board, and these directors supervise the management of the corporation.[50] This is why corporate law courses consider whether annual meetings,[51] the proxy process,[52] and other devices effectively endow shareholders with a voice in corporate affairs. And similarly, it explains the debate over whether current policies must be amended.

The debate reflects deeply held philosophical beliefs on how corporations are most efficiently run.[53] Not surprisingly, even long after well publicized, initial SEC proposals to increase shareholder power through changes to the proxy solicitation process,[54] a route for reform remains unsettled. Because reforms to the proxy process might effectively redistribute power at corporations—in a way, depending on one's views, that might be for the better or for the worse—the interested parties continue to declare loudly their preferences.[55] This is a wonderful topic for discussion in business law classes, because it challenges students to consider policy reforms, which, if adopted, could have an enormous effect on their future clients. It also is a topic well suited for utilizing another aspect of Stewart's Disney narrative—the events which likely may have led to Eisner's departure from the company.

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50. *See generally* FRANKLIN A. GEVURTZ, CORPORATION LAW 195 (2000).

51. *Compare* Hoschett v. TSI Int'l Software, Ltd., 683 A.2d 43 (Del. Ch. 1996) (considering whether an annual meeting is required to elect directors) *with* DEL. CODE ANN. tit. 8 § 211 (2001) (contemplating election "by written consent in lieu of an annual meeting").

52. *See* 15 U.S.C. § 78n; Solicitation of Proxy Materials, 17 C.F.R. § 240.14 (2006).

53. Again, as a practical matter, default rules contemplate fairly limited shareholder power—typically voting rights related to the approval of delineated, extraordinary corporate actions and the election of directors; access to certain information; and limited rights to bring suit—while leaving oversight of management to the directors whom shareholders elect. *See* CLARK, *supra* note 34, at 93–105.

54. Some limited changes have been made, for instance to the disclosure process related to proxies. *See* Disclosure Regarding Nominating Committee Functions and Communications Between Security Holders and Board of Directors, Securities Act Release No. 8340; Exchange Act Release No. 48,825, Investment Company Act Release No. 26,262; File No. S7-14-03 (Nov. 24, 2003), 68 Fed. Reg. 69,204 (Dec. 11, 2003). However, much of the SEC's proxy reform package remained unadopted significantly after release of the SEC's initial proposal. *See* Securities Holder Director Nominations, Exchange Act Release No. 48,626; Investment Company Act Release No. 26,206; File No. S7-19-03 (Oct. 14, 2003), 68 Fed. Reg. 60,784 (Oct. 23, 2003) (offering proposed rules in 2003). And after he assumed the SEC chairmanship, Christopher Cox raised additional issues by placing new emphasis on proxy reform proposals related to issues such as electronic delivery. *See* Internet Availability of Proxy Materials, Exchange Act Release No. 52,926; Investment Company Act Release No. 27,182; File No. S7-10-05 (Dec. 8, 2005), 70 Fed. Reg. 74,598 (Dec. 15, 2005); *see also* Rachel McTague, *SEC Delays Public Consideration of Proxy Access Issue Until December*, 38 BNA SEC. REG. & L. REP. 1717 (2006) (noting further delay on consideration of proxy issues and impact of appellate litigation); Jeremy Grant, *SEC Postpones Decision on Company Proxies*, FINAN. TIMES, Oct. 13, 2006, at 19 (reporting extension of time to consider proxy issues).

55. The Commission already has received thousands of comments on the shareholder director nomination proposal. *See* Comments on Proposed Rule: Security Holder Director Nominations, File No. S7-19-03, http://www.sec.gov/rules/proposed/s71903.shtml (last visited Aug. 18, 2006). Such intensity of interest in proxy reform amounts to something similar to that in a political campaign.

These events center around Disney shareholder action inspired, in part, by Walt Disney's nephew, Roy, who, under uncomfortable circumstances, resigned from his position at the company after a decades-long tenure. Roy Disney, who had various sources of power at Disney—he held executive and board positions at the company, he was one of the largest individual shareholders, and he possessed the Disney name—was going to be forced to retire from Disney's board.[56] Stewart relates that Roy Disney learned in November 2003 that he would not be re-nominated as a director,[57] but quickly trumped this coming event by resigning from the board of directors and from his position as chairman of the company's feature animation division (pp. 465–69). In a letter to Eisner, he frankly averred that "it is my sincere belief that it is you [Eisner] who should be leaving and not me" (p. 469).

After his departure, Roy Disney rallied shareholder forces. To this end, he and Stanley Gold, another dissident who had served on the Disney Board, started a SaveDisney website to evict Eisner from Disney and used "Howard Dean's grassroots, Internet-based campaign for the Democratic Presidential nomination" as their model (p. 493). Their colorful internet efforts eventually included "streaming audio and video" and "a cartoon showing Eisner dressed as the evil queen from *Snow White*" asking, as he stares into the mirror, " 'Who's the greediest of them all?' " (p. 493).

Although the circumstances and corporate law did not permit the Disney shareholders to replace Eisner immediately with their favored individuals,[58] Stewart expertly relates how the dissidents creatively worked to orchestrate an embarrassing vote in which shareholders withheld their support for Eisner and other directors "deemed most under his influence." (pp. 493–94). After the dissidents' campaign began, in the months leading up to this vote, independent and influential proxy advisory services, who provide supposedly objective advice on how shareholders should vote, began to question the current management team; within days of Disney and Gold's appearance at Institutional Shareholder Services ("ISS") bemoaning Disney's board and financial performance, that service recommended that shareholders should vote to "withhold" their confidence in Eisner (pp. 494–502). Of course, large, institutional investors represented powerful potential allies in the campaign against Eisner, and Stewart further explains how CalPERS, the largest pension fund in the United States, and other state pension funds joined the dissenters (pp. 502–03). Stewart skillfully contrasts the surge of the dissenters' campaign with efforts of Eisner and his allies to defend the company and to fight back in the media and elsewhere; Stewart lets the tension created by the competing efforts build before reporting on the results of the battle (pp. 493–511). In the end, "43 percent of the shareholders ...

56. Although specified, advanced age triggered Disney's mandatory retirement requirement, it appears that the policy previously may have been ignored. P. 427.

57. This fact alone indicates that shareholders' power to elect directors may result in less actual power if the ability to nominate whom they vote for is limited.

58. The campaign began too late for a full proxy contest to replace Eisner and others with a full slate of alternative candidates. Pp. 493–94.

withheld their votes from Eisner, and 24 percent from [former Senator and Disney Board member George] Mitchell" (pp. 510–11). Faced with the results, Disney's board quickly convened and later issued a press release stating it had separated the chairman and CEO positions, and had elected Mitchell to the nonexecutive post; Eisner was no longer chairman.[59]

DisneyWar's narrative on these points is not only theatrical, it is informative. As classes discuss alterations to shareholder power, they might consider various questions. One might inquire whether specific changes to shareholder rights would empower or limit the rights of shareholders like those at Disney. Also interesting to consider is whether such changes are necessary in light of the demonstrated ability of Disney shareholders to take effective action under current corporate law or whether the nature of the Disney shareholders in this instance (with committed, wealthy, well-connected leaders and rank-and-file shareholder perhaps particularly concerned about preserving the company's iconic nature) significantly differs from that of shareholders at other corporations.

The discussion can embrace the fact nicely reflected in *DisneyWar* that management interacts differently with distinct subcategories of shareholders at a single corporation. At times during his tenure, Eisner could be quite solicitous of some large shareholders, including Roy Disney.[60] Such interactions might have been for strategic reasons to help Eisner to achieve or to consolidate power.[61] In many ways, keeping large shareholders happy is eminently sensible from management's perspective, but it raises the additional issue in considering reform of shareholder powers of any existing unequal treatment of different shareholders. Accordingly, students should be challenged to consider how power differences between shareholders should shape their opinions of potential reform paths. Indeed, this is a fact that corporate scholars and policy-makers also would do well to consider.

59. Pp. 511–12. Separation of the chairman and chief executive functions has become one type of change called for by corporate governance reformers. Although not originally as common in the United States as in England, some believe that such separation may limit problems associated with placing too much power in the hands of a single individual. *See* Cynthia A. Williams, *Icarus on Steroids*, 94 GEO. L.J. 1197, 1213 & n.76 (2006); *see also* Christopher J. Christie & Robert M. Hanna, *A Push Down the Road of Good Corporate Citizenship: The Deferred Prosecution Agreement Between the U.S. Attorney for the District of New Jersey and Bristol-Myers Squibb Co.*, 43 AM. CRIM. L. REV. 1043, 1053 (2006) (noting that the need to open additional information pipelines to corporate decision-makers beyond the one to the CEO's office reinforced the desire to split the CEO and chairman positions between two individuals).

60. P. 125 (describing Eisner's credit to Roy Disney for animation success). Indeed, Roy Disney's involvement in events surrounding the expulsion of Walt Disney's son-in-law from Disney management, clearing the way for the arrival of Eisner in the 1980s, further indicates how major shareholders can be allies to some managers and opponents to others in a company's governance. Pp. 48–55.

61. P. 54 (noting that Eisner even reached out to Walt's side of the family during the events surrounding the transition to his position of leadership).

III. TEACHING THE TEACHERS (AND POLICY-MAKERS)

Just as students can learn from *DisneyWar*, so too can corporate law scholars and policy-makers. The detailed journalistic investigation that produced Stewart's case study of Disney should inspire more careful consideration of the effects of policy proposals at the micro as well as the macro level. Today's corporate law scholars and policy-makers operate in a particularly lively regulatory environment. Scandals sparked a spate of rapid policy-making, including passage of the Sarbanes-Oxley Act,[62] that continues to result in a variety of new regulations. Notwithstanding the headiness of the regulatory environment, a haze of good intentions should not obscure the need for careful attention to details and potential costs of additional regulations.

Scandals and other crises historically have inspired major policy changes, but recent changes raise significant concerns. Not all of the changes are unabashedly admired.[63] The changes raise fundamental questions about the traditional allocation of authority between state and federal regulators in the corporate law arena, as federal action increasingly encroaches on the traditional domain of state corporate law policy. One can agree or disagree with the merits of this reallocation of authority. Regardless of one's position, however, it is important to note the ironic nature of some of the new federal regulation. As new federal regulations proliferate, some discretion for existing federal regulatory agencies—for example, the discretion to adjust regulations to address problems that the regulations create—appears to be in decline.

A close examination of aspects of the Sarbanes-Oxley Act[64] illustrates this phenomenon. In particular, the legislation expands the role of the SEC in regulating corporate governance while decreasing the agency's discretion to select the best means to do so or to provide regulatory relief as needed. Where previous legislation increasing SEC authority often granted the Commission exemptive or rulemaking authority without prescribing the content of rules,[65] newer legislative initiatives not only require the SEC to

62. Sarbanes-Oxley Act of 2002, Pub. L. No. 107-204, 116 Stat. 745 (codified in scattered sections of 11, 15, 18, 28, and 29 U.S.C.).

63. *See, e.g.*, Roberta Romano, *The Sarbanes-Oxley Act and the Making of Quack Corporate Governance*, 114 YALE L.J. 1521 (2005); *see also* Jeremy Grant, *Sarbanes-Oxley Means 'Huge Leak' for US Capital Markets*, FIN. TIMES, July 31, 2006, at 13.

64. 116 Stat. 745.

65. For example, the Securities Acts Amendments of 1975 responded to a variety of problems in the nation's securities markets by granting the Commission broad authority to promulgate rules to effectuate changes. In Section 11(a), the amended Securities Exchange Act of 1934 granted the Commission authority to take the steps it saw fit to create a national market system as long as those actions were consistent with general objectives noted in the statute. *See* 15 U.S.C. § 78k-1 (2000); *see also* Michael J. Simon & Robert L.D. Colby, *The National Market System for Over-the-Counter Stocks*, 55 GEO. WASH. L. REV. 17 (1986) (noting changes brought about over time to the over-the-counter market following the 1975 amendments). More recently, Congress gave the SEC broad authority "to conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons from *any* provision of the Securities Act." 1 LOUIS LOSS & JOEL SELIGMAN, SECURITIES REGULATION 225 (1998).

engage in subsequent rulemaking, but also delineate the contents of the rules to be promulgated.

Professor Jill Fisch and I analyzed the shortcomings of a statutory provision taking such an approach when we critiqued Section 307 of the Sarbanes-Oxley Act.[66] That statutory provision required the SEC to promulgate rules of conduct for attorneys and mandated specific content: obligatory reporting provisions to include in the rules.[67] This resulted in the SEC's adoption of the so-called Part 205 rules.[68] Notwithstanding the good intentions of legislators drafting provisions such as Section 307 or the laudability of their goals, such heavy-handed mandates, hastily crafted in the crucible of scandal, exacerbate the problems of ill-considered policy decisions. Rather than allowing implementing regulators to consider more fully the implications of such regulation and to adjust rules to account for those implications after statutes are enacted, these legislative mandates further enshrine any shortcomings of the initial policy choice.[69]

Unfortunately, notwithstanding growing criticism of recent regulatory initiatives, additional scandals, such as the recent ones involving backdating of stock options, make it less likely that the current pace of policy-making will slow. If that is the case, it becomes more important for scholars and policy-makers to consider at the outset not only the general benefits they hope to achieve with new policies, but the likely effect of those policies on individual business entities. One way to do this is to hypothesize how new policies might affect individual entities based on realistic descriptions of how those entities work in case studies such as *DisneyWar*.

Moreover, in addition to general insights that it provides about corporate governance, some of the greatest revelations of *DisneyWar* are about how eclectic and quirky a corporation can be. By personalizing his narrative to show how individuals, and their personal nature, drove so much of Disney's operations, Stewart provides reason for policy-makers to take pause. They

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66. Jill E. Fisch & Kenneth M. Rosen, *Is There a Role for Lawyers in Preventing Future Enrons?*, 48 VILL. L. REV. 1097 (2003).

67. Sarbanes-Oxley Act of 2002 § 307.

68. Implementation of Standards of Professional Conduct for Attorneys, Securities Act Release No. 8185; Exchange Act Release No. 47,276; Investment Company Release No. 25,919; File No. S7-45-02 (Jan. 29, 2003), 68 Fed. Reg. 6296 (Feb. 6, 2003).

69. More recently, section 404 of the Sarbanes-Oxley Act raised its own issues related to the breadth of SEC authority. Some suggested that the Commission confer exemptive relief to certain small businesses affected by the provision. The Commission ultimately chose not to do so. Steven Marcy, *SEC Promises More Section 404 Guidance but Rejects Exemption for Small Companies*, 38 BNA SEC. REG. & L. REP. 901 (2006). This was after some claimed the SEC had no power to exempt firms from the provision. *See, e.g.*, Rachel McTague, *AFL-CIO: SEC Has No Power to Exempt Firms from SOX Internal Controls Provision*, 38 BNA SEC. REG. & L. REP. 101 (2006). The issue is sufficiently controversial that some in Congress seek to step into the fray again by passing additional legislation exempting small firms. *See* Rachel McTague, *Feeney, DeMint Introduce Bills to Exempt Smaller Firms from SOX 404*, 38 BNA SEC. REG. & L. RPT 902 (2006); Elana Schor, *Bipartisan Support Secured for Sarbanes-Oxley Exemptions*, THE HILL, May 8, 2006, at 4.

should be cautious about imposing permanent, one-size-fits-all solutions[70] in an economy that relies on unique companies whose success may be a result of their quirkiness.

We also should not fall into the trap often encountered by the law student whose understanding of corporate law issues is constrained by knowledge of a single court opinion looking at the operations of a business in a limited time period. Like students, scholars and policy-makers must expand their time frame when considering the effects of new policies. And like James Stewart, they must be willing to investigate, including, in the case of policy-makers, through direct communication with individuals at the business entities that they regulate, to better identify concerns. If, in addition to providing a teaching tool for the education of future policy-makers, James Stewart's excellent *DisneyWar* also inspires scholars and current policy-makers to understand more fully the inner workings of the companies that they regulate, then the book's impact will be truly noteworthy.

70. *See* Pitt, *supra* note 40 (noting hazards posed by the recent options scandal to reform of Sarbanes-Oxley regulations and the "need to refine [the Sarbanes-Oxley Act and that] at a minimum, its one-size-fits-all philosophy should be changed").