Perspectives
on current developments

Down the Hatch with School Independence

The Department of Education's latest regulatory program, like so many of its predecessors, began in response to a legitimate concern. Parents complained that teachers and counselors were subjecting students to embarrassing or disturbing questions in the classroom. Some of these questions were exercises in statistics gathering: "Are you pregnant?" "Have you ever had an abortion?" Others were meant to identify troubled students ripe for counseling: "Does a member of your family drink more alcohol than you think is good?" Yet others were intended to instill ethical values of various sorts, or at least "clarify" the values that children already held. "If all the members of this class were on a bobsled in Alaska, and three of them had to be thrown to the wolves, whom would you pick and why?"

To many parents and students, this sort of questioning appeared rather impertinent and intrusive. Prying into a family's drinking or marital problems, let alone urging kids to inform on their parents, seemed to trample on personal privacy and invite further intrusion in the form of intervention by official social workers. Questioning students' sensitive or deeply held views about, say, nuclear war or family planning could pose a challenge to the values parents had tried to instill—even (or especially) if the questioning proceeded from an ostensibly "value-free" point of departure.

Twenty or thirty years ago, parents with complaints like this would have had a fairly obvious course of political action. They would have complained to local school administrators and, if that failed, raised a hue and cry in their own town or school district, preferably around the time of the next school board elections. School officials seek to avoid controversy, and the parents' chances of having an impact, given some persistence, would probably have been pretty good.

But this is the post–Great-Society era, and modern parents who want to change things in their local school head straight for Washington. Thus it was that intrusive school questioning became a national issue almost before it became a local one. Organized conservative groups took up the cause of the dissatisfied parents and, in 1978, prevailed on Congress to pass something called the Hatch Amendment, named after Senator Orrin Hatch (Republican, Utah). That amendment, part of the General Education Provisions Act, provides that no school can subject any child to psychiatric or psychological examination in any federally funded program without parental consent, if the questioning is primarily intended to reveal information in any of a list of sensitive subject areas. Among the items on the list are students' "potentially embarrassing" psychological problems, political affiliations, illegal behavior, critical appraisals of family members, and so forth.

Several years passed, during which time the controversy passed through another fairly typical phase: the Hatch Amendment sat there on the books, but the Department of Education did little to enforce it. So conservative activists began a campaign to pressure the department to put teeth in the law—specifically, by establishing procedures to handle Hatch Amendment complaints from parents. This succeeded in getting a set of proposed regulations out of the department on February 22, 1984. The next step was for the activists to arrange an appropriate public record on this proposal. A support network was activated, witnesses and commenters stepped forward, and the process of "public participation" worked smoothly. Of 183 witnesses at public hearings held in seven cities, all but two called for speedy enactment of strong regulations. Of the mailed-in comments, 1,625 were in favor and only 270 were opposed. (The organized education communi-

ty had been caught unaware.) If hearings and comments are a good way to detect true public sentiment, the department would logically conclude that the public was demanding quick action.

When the department adopted final regulations last September, again typically, it did not satisfy the activists, whose spokesmen have criticized the rules as "much too weak and limited in several respects." Under the rules, parents can complain to the department only after they have tried to resolve their complaint at the local level, although actual exhaustion of local remedies is not required. If the department's investigation shows the complaint to be well-founded, the school district is given time to rectify every violation; if that fails, the department can issue an order to cease and desist, or it can cut off funds, subject to appeal.

Now that a right has been created, the next step has been to mass-produce it. The *Phyllis Schlafly Report* has printed a form letter for parents to send to school officials, containing a blanket request "that my child be involved in NO school activities or materials listed below unless I have first reviewed all the relevant materials and have given my written consent for their use." The list attached contains twenty-two major categories, including hot buttons like sex education, evolution, and nuclear war, along with presumably cooler buttons like liquor, witchcraft, "discussions of death and dying," and autobiographical assignments.

The Schlafly list stretches the original statutory category of federally funded "psychological and psychiatric testing and examination" virtually to the breaking point. Senator Hatch himself complains that the parent groups are going too far. But it was not so easy for school officials to ignore the form letters when they began coming in. The department's regulation writers were unable to agree on how to handle a number of potentially controversial issues, such as the definitions of "psychological test" and "primary purpose." So the agency left those issues open, to be resolved when parent complaints came in and were acted on. (So far only six parental complaints have reached Washington, but hundreds of others are being hashed out at lower levels.) The department's own rather vague view is that "most classroom activities" are not covered by the Hatch Amendment.

The education lobby, for its part, has finally roused itself and is lobbying hard for a revision of the Hatch regulations. Such groups as the National Education Association and the national Parent-Teacher Association (PTA) find themselves marching under the unaccustomed banner of decentralization and local control, side by side with school-administrator groups that have tamely submitted to federal control on other issues.

Aside from its reversal of the usual roles of educational "liberals" and "conservatives," there is not much that distinguishes this latest regulatory fracas from those of the past. The translation of plausible interests into non-negotiable rights, the one-sided hearings and deliberately vague regulations, the pervasive spread of the adversary process, and above all the centralization of educational authority in Washington—we have seen all this before. Of course, the people who perfected the machinery of regulatory overkill in controversies over civil rights, handicapped education, and bilingual education probably had no idea that it would ever be turned against them by their conservative counterparts—especially since those conservatives were proclaiming themselves at the time to be ardent opponents of such overkill.

A number of sub-issues provide amusing evidence of how the two sides have exchanged positions. In a reverse-echo of the school prayer controversy, the liberals point out that many of the questionnaires are voluntary, while conservatives respond that students come under strong informal pressure to participate. And the conservative Schlafly newsletter has gone so far as to argue that when school districts accept unrestricted federal grants, the Hatch Amendment should be imported into all their individual programs, not just those that receive specific federal funds. In the better-known Grove City case, on the other hand, conservatives have strongly supported the principle of "program specificity," while civil rights groups have practically denounced it as a racist plot. The Education Department, unafraid of consistency, seems to favor program specificity in both the Hatch and civil rights cases.

Conservative parents point out that some objectionable questionnaires originate at the federal level, so that it is natural to try to stop them there. And they add that at least their

Washington intervention is meant to expand the range of family choice: by contrast, the federal women's educational equity program does not simply give feminist parents the right to opt out of stereotypical curricula, but seeks to replace it with subsidized non-sexist material. In theory, at least, allowing parents to pull one student out of a class does not much affect fellow students.

But most schools will go to considerable lengths to keep a class together rather than relegate a pupil to study hall (or resort to individualized instruction, which is expensive and disruptive). School officials' first reaction to the threat of parental non-consent is thus to see whether they can drop the activity in question. And although the dropping of some topics, like "death education" or liquor education, might not be any great loss, other controversial subjects, like civics and biology, are central to almost any curriculum. Giving families a choice of topics within a school, in short, is a poor substitute for giving them a choice between schools.

The ultimate irony is that, within recent memory, it has been conservatives who were favoring, and liberals who were opposing, allowing school officials to interrogate students about their politics and personal lives. The reason, of course, is that such questioning was meant not to discover opportunities to provide therapy, but to enforce what were called community standards of morality. One might hope that someday liberals will return to their defense of individual privacy against government inquisition, while conservatives will stop undercutting the authority of the schoolmaster by running to Washington with every complaint.

No More Early Projections?

In the words of baseball sage Yogi Berra, "It ain't over 'till it's over." Obviously Yogi was not talking about presidential elections. As anyone knows who watched television the night Ronald Reagan trounced Walter Mondale, that game is often over by 8:01 P.M. eastern standard time, hours before the polls close on the West Coast. For the network pollsters who have been conducting exit surveys through the day, the actual vote counts in all but the closest elections just confirm what they had known by lunchtime.

Networks go to great expense to provide early projections because viewers and listeners eagerly tune in to them—most from curiosity, no doubt, but others, perhaps, because they want to figure out whether to bother voting. Which raises an interesting question. To the prospective nonvoter, early projections are a blessing—a sort of labor-saving device that helps identify those close races in which voting might conceivably make a difference. To the politician and concerned civic activist, they are a curse because they threaten to lower the turnout rate—that ever-drooping pulse rate of presumed electoral legitimacy.

Network projections have been controversial at least since Lyndon Johnson's landslide victory over Barry Goldwater in 1964. After that election there were charges that West Coast voters decided not to cast ballots after they heard the networks declare Johnson the winner. In later years computer technology and polling techniques advanced rapidly. On election night in 1980, NBC's John Chancellor suggested a "very substantial" victory in the making for Reagan at 6:31 P.M. EST and the victory itself at 8:18 P.M., and CBS and ABC followed suit. Not all the networks' West Coast affiliates carried those projections, but the network-owned-and-operated stations in Los Angeles and San Francisco did, and West Coast radio stations relayed similar bulletins to listeners during the afternoon rush hour, according to Percy Tannenbaum and Leslie Kostrich's 1983 American Enterprise Institute book *Turned-On TV, Turned-Off Voters*. In 1984 all three networks projected Reagan's victory shortly after the polls closed in the East at 8:00 P.M.

In both years there were anecdotal reports (discounted by some long-time observers) that voters abandoned poll queues when they heard Reagan had been crowned the winner (and Jimmy Carter had conceded). Democrats complained that their local candidates suffered disproportionately from this effect, either because more Democrats vote toward day's end or because Carter voters were more likely than Reagan voters to be discouraged. They believe a higher turnout might have changed the outcome of some important congressional contests in which incumbents such as Al Ullman

(Democrat, Oregon) and James Corman (Democrat, California) lost by narrow margins.

An outright ban on early projections would bruise the spirit if not bloody the letter of the First Amendment. Instead, lawmakers have been jaw-boning extensively; both House and Senate have passed nonbinding resolutions urging the networks to exercise voluntary restraints. The networks used to resist this pressure, but this year they agreed not to project results in a state until the polls close and to restrict their commentary about voting trends, so that Dan Rather, for example, will no longer hint at 7:00 P.M. that "it appears to be a big night for Candidate Smith." This will not, of course, keep exit poll data from spreading by telephone and word-of-mouth, with all the inaccuracies of the rumor process. Nor will it prevent news organizations from reporting remarks made by party officials before the polls close.

The networks' preferred alternative is a nationwide uniform poll closing time, an idea that dates back at least as far as a 1964 proposal by CBS executive Frank Stanton. The 99th Congress is now considering six bills, all introduced by House Democrats, offering variations on this theme.

H.R. 348 (Guarini, New Jersey) would hold federal elections on the Sunday following the first Saturday in November. The polls in the continental United States would close at 10:00 P.M. EST. H.R. 622 (Wyden, Oregon) would open the polls at 8:00 A.M. and close them at 11:00 P.M. EST. Under H.R. 639 (Biaggi, New York) elections would fall on the Sunday following the first Monday in November, with polls opening at noon and closing at 9:00 P.M. EST. The bill also provides that anyone could use absentee ballots, whether out of town or not; it would cover only the elections of 1988, 1990, and 1992. A second Biaggi bill, H.R. 640, differs in that it would establish a twenty-four-hour voting day with polls opening at 9:00 A.M. EST. H.R. 1759 (Bates, California) would close polls at 10:30 P.M. EST. Lastly, H.R. 1107 (Boxer, California) would give the Federal Election Commission the power to set and regulate uniform poll opening and closing times in the continental United States.

Past Supreme Court rulings have recognized Congress's authority to regulate the timing of presidential elections. Article II, section 1, clause 4 of the Constitution states: "The Congress may determine the time of choosing the (Presidential) electors, and the day on which they shall give their votes; which day shall be the same throughout the United States." Whether Congress should use these powers is another matter; there is still no convincing proof that early projections skew election results.

Postelection surveys of the 1964 race conducted in 1965 and reanalyzed in 1967 failed to find any conclusive evidence that early projections influenced the outcome. The most often cited study finding a positive link was conducted by John Jackson and William McGee, based on 1980 election data compiled by the University of Michigan's National Election Study and California's Field Poll. That study suggests that nationwide turnout would have been 6 to 11 percent greater in the 1980 presidential election had the networks not broadcast early projections.

Some political scientists have questioned the Jackson-McGee findings, however, because the respondents were not surveyed until two months after the election, by which time they might have decided to blame their nonvoting—often a source of guilt feelings—on the by-then well-publicized scapegoat of early projections. (The 1964 survey suffered from a similar problem.) The Jackson-McGee study has also come under criticism for making no allowance for the timing of Carter's concession speech, misidentifying the point at which network election coverage started in the East, and allegedly employing statistically suspect methods.

A 1984 election-day survey of Oregon voters by William C. Adams of George Washington University reached quite different results. Adams found that "only 2.6 percent of the nonvoters blamed TV for their failure to vote—roughly less than one-quarter of one percent of the entire electorate. Most non-voters had not heard the TV projections. Political preferences of the tiny handful of TV-discouraged voters resembled the electorate at large," which further reduces the chance that early projections made a difference in election outcomes.

Whether or not network projections reduce voter turnout, there is reason to believe that some of the uniform poll closing bills might do the same thing. In California, Oregon, and Washington, polls now close at 8:00 P.M. local

time (11:00 P.M. EST). Three of the bills under consideration would shave from a half-hour to two hours off the evening hours of voting in those states, inconveniencing many voters. In Oregon, according to the secretary of state there, one of every ten voters voted between 7:00 and 8:00 P.M. pacific standard time. In the 1974, 1978, and 1980 elections between 6.8 and 9.2 percent of Los Angeles County voters cast ballots after 7:00 P.M. PST.

By the same token, the uniform poll *opening* time of 8:00 A.M. EST stipulated in some of the bills would discourage many East Coast voters who now cast their ballots before they go to work. In all but one of the twenty-one states in the eastern time zone the polls now open before 8:00 A.M., most at 6:00 or 6:30 A.M.

Shifting elections to the weekend would probably bring about much more radical changes in turnout than network projections could possibly be causing. Religious scruples and church attendance, family outings, and sports events would all divert some voters. In 1978, when the city of Cleveland held a vigorously campaigned and extensively reported mayoral recall election on a Sunday, turnout dropped to only 40 percent of registered voters compared with 62 percent in the regular general mayoral contest one year earlier.

Lengthening the election day carries its own cost. A uniform closing time of 11:00 P.M. EST for the continental United States would require forty states and the District of Columbia to keep their polls open at least two hours longer than they do now. Local election officials are already having a hard time recruiting poll workers, according to the editor of *Election Administration Reporter,* Richard Smolka, who says Chicago usually falls about 1,000 poll workers short. Under the current polling hours, one million poll workers are required at the nation's 179,000 precinct polling places.

Whatever the practical harm done by early projections, it is illogical to charge them with "disenfranchising" West Coast voters. In most situations where votes are recorded in sequence, such as at nominating conventions and in legislatures, getting to vote last is a sought-after strategic advantage that can give its holder added flexibility and perhaps the balance of power, especially in close multi-candidate races. Eastern voters might plausibly complain, in fact, that they are presently forced to commit themselves while their lucky Western cousins get to hold their votes in reserve. If eastern states wish to heed these complaints they could refrain from counting ballots until the polls of the western states close. More effective yet, voters in eastern states might refuse to talk to exit pollsters, or even tell them fibs, as *Chicago Tribune* columnist Mike Royko proposed last year. Alternatively, Californians who feel guilty about their late-voting privilege are free to vote earlier in the day, or urge their state to experiment with earlier voting hours.

If early projections really subject voters to disenfranchisement, and if the question is really one of rights rather than convenience, then Alaskans and Hawaiians deserve protection too. Any uniform poll time ample enough to include them would almost have to be on the order of a twenty-four hour election day. Perhaps fortunately, the evils of disenfranchisement seem to arouse controversy only when they afflict states with large or prominent delegations in Congress.

Insider Trading as Victimless Crime

Few corporate-governance issues arouse as much indignation in the general press as insider trading. Allowing executives to reap trading profits based on their knowledge of internal corporate developments is widely viewed as grossly unfair—though it is not always clear who is victimized by this unfairness. Sometimes the companies that the insiders work for suffer harm, but other times they welcome the trading. Outside shareholders may envy the profits of inside traders, but proving that they are harmed by the practice is much more difficult. On the whole, the most common grievance against insider trading is simply that it reduces public confidence, and therefore public participation, in the stock market.

From the applause that greets each new prosecution of a suspected inside trader—the most recent target being former Defense Department official Paul Thayer—one would hardly guess that the merits of this sort of regulation are being increasingly questioned in academic circles. Insider trading seems to be one of those cases where regulators are moving in the opposite direction from academic opinion.

In Brief–

Spy in the Sky at EPA. The Supreme Court agreed June 10 to decide whether the Environmental Protection Agency violated Dow Chemical's right to privacy when it chartered an airplane to fly a surveillance mission over a Dow factory to search for pollution violations. Dow says the overflight of its Midland, Michigan plant, which was conducted without a warrant, infringed on its Fourth Amendment protection against warrantless searches and seizures. EPA's agents used a sophisticated aerial camera that can distinguish equipment as small as one-half inch in diameter.

Dow won its case in district court, but the Sixth Circuit Court of Appeals reversed, holding that Dow had no reasonable expectation of privacy because it had taken no "precautions" against aerial surveillance. Lawyers on Dow's side complained that the only effective precaution would be to build an opaque dome over the entire plant —lending new meaning to EPA's use of the term "bubble policy."

He Who Pays the Wiper. . . . The city government in Baltimore has been spending much of its time recently debating the issue of how and whether to regulate "squeegee kids." Those are the kids who run up to cars stopped at red lights, wash the windshields, and then ask the driver for a tip. Some motorists complain that they are being intimidated into paying tips even when they didn't want their windshields washed. Defenders of the squeegee kids say most of them are just trying to earn an honest living and that summer jobs for teenagers are hard to come by.

The city council, at the behest of the police commissioner, passed a measure banning the squeegee kids, but the debate was acrimonious, with one member charging that the measure was a racist scheme to punish mostly black kids at the behest of mostly white motorists. That prompted mayor William Schaefer to appoint a special squeegee commission to work out a compromise.

They came up with a plan to set aside government-run squeegee centers in parking lots where youths wearing photo ID badges could wash windows under the eye of designated supervisors. "It lets the kids know there are regulations and supervisors in the real world," explains local activist Lywonda Megginson-Kennon. Thirteen-year-old wiper Kevin Archer is already used to the idea, according to an interview in the *Baltimore Sun:* " 'I'm going to get me something on my shirt to say it's all right for me to wash windows,' he said, believing that the legitimacy of a city-issued photo ID would win him more customers." As for those recalcitrant urchins who continue to dart into traffic to offer their services, they can be fined under the new law, or, better yet, sent to counseling.

Of course, there are spoilsports who insist that not one motorist in a thousand will bother to patronize the new parking-lot centers. If that happens we may expect renewed debate between those who say that the squeegeeists' services have always been unwanted, and those who say that the Baltimore government has simply made it inconvenient to patronize them.

Competition Spreads North. The Canadian government has recommended changing the law to make the nation's railroads more competitive with U.S. lines, the *Wall Street Journal* reports. Under the Staggers Rail Act of 1980, U.S. carriers have snatched $75 million in business from their northern competitors, the Canadian Transport Commission was told in hearings. (See "U.S.-Canadian Railroads: Bordering on Frustration," *Regulation,* July/August 1983.)

The proposals would allow Canadian railroads to enter confidential contracts with shippers to carry some transborder shipments, as American railroads are now allowed to do. The Canadian lines would also be freed from having to file official tariffs on some international traffic.

The standard defense of the practice is still Henry G. Manne's 1966 volume *Insider Trading and the Stock Market,* which has been followed by more recent work by a number of other scholars. These critics argue that insider trading enhances the efficiency of the capital market by enabling stock prices to adjust more quickly to reflect underlying economic realities. If insiders are allowed to trade they will tend to push prices in the "right" direction, and faster than if the market had to wait for formal public disclosure. Moreover, the ultimate price adjustment attributable to a piece of news may be smoother than the sharp price "cliff" that would result if insider trading were perfectly suppressed until the news became public.

In addition, Manne says, insider trading may serve as an efficient way for some firms to compensate employees whose entrepreneurial work strongly influences share prices. Fixed salaries are a poor way to call forth such creative efforts because the company cannot know in advance how much the creative efforts will be worth or who will produce them. Bonus schemes might seem to solve this problem from the company's point of view, but they jeopardize the creative employee, who may not agree with the company's after-the-fact evaluation of his contribution. Stock options are a closer way to tie performance to compensation, but because creativity is unpredictable, the firm must issue the options to all employees who might

make creative discoveries. A right to carry on insider trading, however, is of special value to those employees who are the first to reach correct conclusions about the company's future prospects, a group that should more closely overlap those who make profitable entrepreneurial discoveries. In addition, the amount of compensation derived from inside trading will not depend on the after-the-fact discretion of the employer.

There is no general common law rule prohibiting insider trading, nor do firms seem to make much of an effort to prohibit it through internal regulation. Dennis Carlton of the University of Chicago and Daniel Fischel of that university's law school raise this latter point as a question in a recent *Stanford Law Review* article: Why do companies hardly ever try to stamp out insider trading by their own executives? Most of the evils attributed to insider trading, after all, wind up harming the firm whose stock is traded. If the returns enjoyed by average shareholders are depressed, the firm will find it more costly to raise new capital. The same thing will happen if investors become "demoralized"—assuming this vague harm has any measurable content. If insider trading is a major discouragement to present or prospective stockholders or financiers, then firms that ban trading by their executives should out-compete their rivals in capital markets.

It should not be very costly for firms to develop internal rules against insider trading. The cost to a firm of writing restrictions into executives' contracts should be minimal, and the informal sanction of dismissal is probably the most powerful sanction in very many cases anyway. The general absence of such restraints, both now and before the legal assault on insider trading got into gear in the 1960s, suggests that they are not of great value to investors.

There is an exception: law firms and financial printers often go to significant lengths to prevent insider trading by their employees. This exception makes sense in several ways. First, such trading is unlikely to serve as compensation for unusual creative services. Second, the stock bought is most often not that of the client firm, but that of a merger partner, and such purchases may drive up the price the client must pay. Moreover, the confidential information is generated by, and belongs to, the customer, not the trader's own firm. Since the clients are unlikely to look favorably on such trading, these firms, which depend on their reputations in the corporate community, have strong incentives to adopt internal controls.

The naive explanation for why corporate restraints on insider trading are rare is that managers are in cahoots with each other to enrich themselves at the expense of other shareholders. Although such managerial perfidy is not unknown—and is restrained by its own set of legal rules—the modern corporate governance literature makes clear that in most situations the market has ways of getting managers to police each other's behavior for the shareholders' benefit.

Moreover, companies generally have legal recourse against damaging acts of employee disloyalty, quite apart from the insider trading laws. When insider trading by employees raises the cost of a merger or repurchase program, the employee's actions amount to the "preemption" of a corporate opportunity, which could violate their fiduciary duty to the corporation under state law. For example, Anheuser-Busch has sued Thayer, charging that he violated directors' duties under state corporation law when he allegedly told friends to buy shares in a firm Anheuser was planning to merge with, thus increasing Anheuser's ultimate acquisition costs. Similarly, companies might have a strong interest in forbidding insiders to sell their stock short, a practice that may give executives a perverse incentive to manufacture bad news or even sabotage the company (and that Congress has made illegal).

Although the regulators of insider trading may have been on the intellectual defensive for some time, they remain on the legislative and judicial offensive. In the Insider Trading Sanctions Act of 1984, Congress last August gave the Securities and Exchange Commission new powers to impose treble damages, and Congress also increased fines tenfold and added stiff civil penalties to the existing criminal penalties for inside traders and their aiders and abettors.

The SEC also continues to pursue instances of what might be called "outsider trading." The first notable case was that of a financial printer who traded on his knowledge of takeover offers. The Supreme Court threw out that conviction in 1980, ruling that the printer, who was not an "insider," had no duty to disclose

(*Continues on page 36*)

Insider Trading as Victimless Crime
(*Continued from page 10*)

his information before trading. But the SEC proceeded to adopt a regulation declaring everyone with knowledge of impending takeover offers to be such an "insider." The commission also prosecuted an investment analyst who had discovered a massive corporate fraud but had taken time to warn his clients to sell their shares before he passed on the story to reporters. The high court threw out the case against him in 1983, again because he had no duty of disclosure. A court has just convicted a *Wall Street Journal* columnist whose "inside information" consisted of advance knowledge of his own articles.

Like other victimless crimes, insider trading is hard to stamp out. In a 1980 article, Michael Dooley of the University of Virginia analyzed both SEC enforcement and private damage actions under the insider trading laws and concluded that "the present enforcement system has not deterred insider trading appreciably." Stocks still rise before good news is made public and fall before bad news is made public; a 1981 study by Arthur Keown and John Pinkerton of takeovers between 1975 and 1978 found that close to half the price run-up typically occurred before the takeover was announced. This is not surprising, given the substantial sums involved. What would be surprising is if corporate America and the financial community could not between them find a way to cash in on nonpublic information without leaving a trail for the SEC and the plaintiff's securities bar.

But the law does have some effect, by severely penalizing potential traders who are not in a position to cover their tracks. The absence of their competition gives the inside traders who expect to get away with it *more* chances for profit than they would otherwise have, by slowing down the adjustment of market prices to reflect new information. Manne and others suggest that a system of partial enforcement of regulations may actually increase disclosure delays compared with a regime of free and open insider trading.