

21 Health Matrix 189, *

n106 Jensen demonstrates the power of the integrity discourse norm by embodying it in the public delivery of his work. When he spoke at Stanford University, *supra* note 3, he promised in a confident staccato to deliver something new that would change every aspect of all of our lives. He said the integrity norm has revolutionized the operation of companies with which he is involved, including SSRN, which he founded and helps run as a private for-profit enterprise. Acknowledging that his audience-comprised of business scholars, lawyers, directors and officers of publicly traded firms-was likely not used to "such blunt talk," he confessed to us that he had cheated on his wife, had affairs that ruined his marriage and hurt his family-his daughter was in the room, he said she would corroborate it. He said he would have been a better man, a greater scholar, if he had lived his life with integrity (this is one of the most important business scholars of the last fifty years). He noted happily that it is not just SSRN which is thriving, but also his romantic relationship with a new partner, with whom he is in integrity. The talk is available in its entirety on the website of Stanford University Law School's Rock Center for Corporate Governance. *Id.*

n107 See *supra* notes 4-5 and accompanying text.

n108 488 A.2d 858 (Del. 1985). In the *Van Gorkom* case several directors of Trans-Union, Inc., a large publicly traded corporation, were found to have violated their fiduciary obligations to the shareholders when they sold the company for too low of a price. *Id.* at 864-70, 888. The directors were held liable not because of the substance of their decision, but because of their failure to become informed and to deliberate as a board about the value of the company and the proposed transaction. *Id.* at 893. (The company was actually sold at a substantial premium over market price, but the sale was pulled off in a very short amount of time, without substantial process). *Id.* at 864-70. *Van Gorkom* establishes the modern standard of directorial liability-there is no liability for substantively bad decisions, but there is liability for failing to deliberate about decisions in an informed, good faith-fashion.

n109 Corporate speech to shareholders is presently heavily regulated both by state corporate law and federal securities laws which impose substantial disclosure requirements in connection with the sale of securities; such regulations have so far not been struck down on First Amendment grounds. See generally Aleta G. Estreicher, Securities Regulation and the First Amendment, 24 GA. L. REV. 223 (1990) (analyzing application of First Amendment to the federal securities laws); Nicholas Wolfson, The First Amendment and the SEC, 20 CONN. L. REV. 265, 265-266 (1988) ("examining the impact of the first amendment on the principal areas of SEC regulation" and arguing that corporate proxy statements, prospectuses, accounting statements, and the like are all methods of expression that should be fully protected by the First Amendment.).

n110 See *supra* text accompanying notes 10-14.

n111 See *supra* text accompanying notes 5-6 and 22.

n112 See *supra* text accompanying notes 80-89.

n113 See *supra* text accompanying notes 90-109.

n114 *Supra* note 3 and accompanying text.

n115 See *supra* note 4 (citing literature on corporate complicity in public health problems including the tobacco epidemic, the obesity problem, and environmental degradation).

For internal use only