

Societas Advocatorum: Harnessing Market Mechanisms To Promote The Rule Of Law – An Idea Whose Time Has Come

The Editor interviews Dan Schneider, Executive Director, Societas Advocatorum (SA).

Editor: Tell us about your background.

Schneider: I served for nine years as a trial attorney in the Criminal Division of the U.S. Department of Justice, focusing on white-collar crime. I also served on DOJ's Campaign Financing Task Force, investigating and prosecuting abuses of campaign financing laws. I also served as the Justice Department's Resident Legal Adviser in Russia, working on promoting the rule of law there, and previously had taught American criminal and constitutional law in Russia on a Fulbright teaching grant.

For the past five years I have been a consultant to several organizations and NGOs, including the World Bank, on issues concerning corruption and the rule of law. In 2005, I was Director of the ABA's International Rule of Law Symposium.

Editor: What is the basic idea behind SA and who was responsible for it?

Schneider: The SA is an international society of lawyers that uses a bottom-up approach to fighting corruption and spreading the rule of law in developing and transitional countries. It is based on harnessing the self-interest of lawyers in being retained by corporations and international law firms which do business or invest abroad. SA's members are individuals, not law firms or other groups, who will be selected based upon their legal skill, integrity and commitment to the rule of law. SA will publicize its members and their qualifications. SA is a truly international undertaking and its Latin name reflects that.

The inspiration for SA came from Lawrence Newman, a senior partner in Baker & McKenzie's New York office. Larry is a well-known lawyer in the field of international litigation and arbitration with over 30 years experience representing companies in litigation outside the United States. Although a dedicated proponent of using arbitration to resolve disputes, he is aware that multinationals are affected by the rulings of local courts.

Editor: What attracted you to SA?

Schneider: My experience convinces me that SA's innovative approach to tackling corruption will be successful because it uses market mechanisms. It will not rely on government bureaucracies, but on the consumers of legal services – namely, corporations and law firms. I personally have been involved in anti-corruption programs for many years, efforts run by the World Bank, USAID and NGOs. Although these programs are often useful, they are characterized by a top-down approach and work through government agencies, many of which are themselves corrupt.

Many anti-corruption initiatives consist of studies commissioned by government donors or international development banks. These studies result in carefully written reports and recommendations. Often the recommendations are not implemented, because there is little incentive for key government leaders to change since they benefit from existing corruption.

Many governments simply lack the political will to address corruption seriously.

The approach of SA, by contrast, is totally different and will be more effective. It recognizes that change can be achieved with economic and peer-related incentives. Lawyers are generally competitive, have a great deal of pride and seek recognition. Lawyers will, as a result of SA, realize it is in their individual self-interest to be perceived, accurately, as practitioners who are not part of a corrupt system, and indeed as being part of an effort to eradicate corruption in the legal system. They will be rewarded, by the desire of corporations and law firms to retain lawyers who are SA members, for maintaining these high standards.

The value of SA membership will be enhanced by publicizing its mission. We will work hard to communicate what it means to be a member of SA, namely that its members practice law with the highest degree of professionalism and integrity and do not engage in bribery or other corrupt practices. We will make it easy to find SA lawyers by publicizing the names and specific qualifications of members. SA will reinforce the advantages of hiring members through conferences, journals and newsletters – and, of course, in publications like *The Metropolitan Corporate Counsel*.

Editor: What are the qualifications for membership in SA?

Schneider: Members will be admitted on the basis of three criteria. First, they must be lawyers or judges who perform at the highest level of professionalism, legal skill and dedication to the rule of law. Second, they practice with scrupulous honesty and integrity and do not engage in bribery or other corrupt activities. Third, members must commit themselves to pro bono work directed at reducing corruption affecting their country's legal system. Each national chapter will decide where its pro bono work can be most effective. It might, for example, involve efforts to improve the standards for selecting judges – eliminating such considerations as political connections and cronyism – or be directed at assuring that judicial decisions are based on the merits of the individual case.

Membership will be based on strictly objective criteria and not on the basis of connections, membership in bar associations, positions or titles. The vetting process will include a questionnaire and background check and will consider an individual's professionalism, skill, and reputation for honesty and integrity. Our selection and vetting process is one of the important differences between SA which, it bears emphasizing is not a bar association, and international and national bar associations. There will be no blackball system – a current member of SA cannot block someone else from applying for membership. Although applicants may be recommended by existing members, that alone will not be sufficient for membership.

Membership will not be limited to a specific number of persons in a country. Rather, we hope to see membership expand as more lawyers have the incentive to attain the skills and practice with the requisite integrity that makes membership possible. Membership will be a valuable credential that involves a continuing com-

mitment by members to creating a legal system based on the rule of law. When leaders of a profession conduct their lives in this way and are recognized for doing so, others will follow. I can't emphasize enough the importance of leadership in fighting corruption. SA will reward and encourage this kind of leadership.

Editor: In which countries will chapters of SA be located?

Schneider: Many chapters will be located in countries with significant levels of corruption, where there is a significant amount of business activity, and where foreign investment would increase if the legal system were less corrupt. Mexico, Brazil, Argentina, Chile and Ecuador are excellent examples.

As we hear from outstanding lawyers in other countries wishing to set up chapters, we will work with them to establish chapters in those countries as well. The need for SA chapters exists in most countries – developed and developing – since the world is becoming so interdependent. Therefore, as SA grows, I would foresee the need for chapters in China, Vietnam, much of Asia and the Middle East, Russia, Eastern Europe, many African countries, as well as in western countries.

Editor: How will SA be governed?

Schneider: SA is assembling an internationally diverse Advisory Board. The Board will be involved in major policy decisions and setting strategic direction, rather than day-to-day management. Current members include Judge John Walker, Senior Judge of the Court of Appeals for the Second Circuit, Hans Corell, former General Counsel of the United Nations, and Maria Dakolias, Lead Counsel at the World Bank.

We are seeking additional Advisory Board members. General Counsel of multinational corporations would be especially welcome, as well as partners in law firms with significant international practices.

There will be a close relationship between the central office of SA and the national chapters, because all chapters will be required to adhere to the same standards. Applicants will be vetted centrally to ensure the standards for membership are being uniformly applied. At the same time, SA is not Uncle Sam telling others to shape up.

Editor: What is the role of U.S. corporations and law firms in fighting global corruption?

Schneider: Many corporations and law firms already support the work of organizations that take different approaches to battling corruption. Transparency International is an example. Corporations understand all too well that corruption adds to the risk of doing business, and are looking for innovative and effective ways to reduce corruption.

We now live in a post-Hewlett-Packard environment where companies must be able to trust their lawyers, suppliers and other agents. One lesson of HP is that behavior perceived as unethical can sometimes be even more damaging to a corporation than a clear violation of law. It is essential for global companies to avoid the

reputational and financial damage that can ensue if they hire lawyers who are corrupt. Selecting lawyers who are members of SA provides a threefold benefit: it protects companies from legal and reputational damage, it encourages other qualified lawyers to become members, and it promotes pro bono efforts to advance the rule of law.

Editor: How will corporations and law firms benefit from the efforts of SA?

Schneider: Most corporations now understand that it is not sufficient to focus only on the next quarterly or annual report. They must consider what will happen five or 10 years from now. If companies wish to continue to expand and keep up with their competitors, they will need to open new markets – and the persistence of corruption will keep them out of many countries. Multinationals need to have the utmost confidence that their lawyers will prevent them from becoming involved in corruption-related imbroglios. SA will accomplish this by merging the supply of lawyers who practice with the utmost skill and integrity with the great demand for such lawyers and, through the operation of SA's incentive-based approach, will increase the supply of lawyers with these qualifications.

Editor: How will SA be funded?

Schneider: We have some funding now and expect additional support from corporations, law firms and foundations. We have applied for 501(c)(3) status from the IRS. We also expect additional funding from dues and other contributions by members.

Editor: How can corporations and law firms help promote the work of SA?

Schneider: There are a number of ways corporations and law firms can help promote our work. First, they can provide direct financial support. The SA has been designated as a pro bono project at Baker & McKenzie. Second, we invite corporations and law firms to encourage their lawyers to seek membership in SA and become active in its affairs. Lawyers can also identify countries ripe for opening chapters, and suggest individuals as core members for those chapters. They can also recommend candidates for the Advisory Board.

Corporations and law firms interested in more fully supporting our work may wish to partner with us, perhaps in establishing and helping to run chapters in one or more countries. This may be an especially attractive option when a company or firm has a presence, or hopes to establish a presence, in a particular country.

In these ways, we can work together to create a nucleus of corporate stakeholders working to combat corruption and promote the rule of law.

Editor: How can our readers get more information about SA and how can they and their companies help?

Schneider: We welcome advice or suggestions of any nature. Please contact us at either information@advocatorum.org or lwn@bakernet.com. Our web site, www.advocatorum.org, is under construction and will be operating soon.