The following is an article by Mr. Schneider that appeared in The Philadelphia Lawyer (Fall 1999)

HOW FORTUITIES SHAPE A CAREER

By Carl W. Schneider [Footnote: Mr. Schneider is a partner of the Philadelphia-based law firm of Wolf, Block, Schorr and Solis-Cohen LLP. He has served as a Special Advisor to the SEC's Division of Corporation Finance; Chairman of the Philadelphia Bar Association's Section on Corporation, Banking and Business Law; visiting Associate Professor at the University of Pennsylvania Law School; and Law Clerk to U.S. Supreme Court Justice Harold H. Burton and Judge Herbert F. Goodrich of the U.S. Court of Appeals for the Third Circuit.]

When I was asked as a small kid what I wanted to be when grown up, when many peers said "fireman" or "cowboy," my answer was always "lawyer". I had no better reason than the fact that my dad, whom I admired greatly, was a lawyer. In fact, I knew very little about what lawyers really did until after my law school graduation. My career in a large departmentalized firm was very different from my father's as a successful solo practitioner who did a bit of everything. My choice was a lucky accident — the first of many affecting my professional life — because I am probably better suited for the law by interests and natural inclination than most other things I could have done.

My 40 years in practice have been devoted principally to corporate and business law matters, with a heavy focus on securities law. Two recent events have caused me to reminisce about some fortuitous events that have influenced my career. I received an award for professional contributions from the Philadelphia Bar Association's Business Law Section and I prepared a few words of acceptance looking back on my practice. I also participated in a panel discussion at the ABA 1998 Annual Meeting on the subject of practice before administrative agencies. My remarks for that occasion focused on several of my long term projects, principally through writing and speaking engagements, to accomplish reforms in the administration of the federal securities laws. [Footnote: At my ABA presentation, I detailed my advocacy efforts to change the securities laws (principally articles), the SEC's initial response (usually negative) and the final result (usually as I have advocated) in the following areas: Administrative reform of the securities laws; Inclusion of soft information in filings; Protection against civil liability from innocent and immaterial errors in exempt offerings — "The I&I Defense;" The duty to update; Arbitration provisions in corporate governance documents (the one position that the SEC has completely rebuffed to date); and Section 4(l-1/2). A detailed analysis will appear in a forthcoming issue of *Business Law Today*, a journal of the ABA's Business Law Section.]

Frustration of My Original Preference: to Avoid Securities Law

On graduation from Law School, I had only one preference about a specialty. It was a negative preference — I did not want to be a securities lawyer. I formed this conclusion shortly before graduation when I visited a friend at a very prestigious New York City

firm. I found him in a cramped office piled high with bound volumes of prior transaction documents. He was marking up a lengthy printed booklet with a very sharp pencil. I noticed that he was engaged primarily in changing the names of parties, dates, numbers and other transaction-specific details. When I inquired about his activities, he told me he was a securities lawyer and was preparing a trust indenture. His job consisted of making the appropriate changes from a similar prior deal. I quickly concluded that I would not even want to read, let alone write, such a document as a regular professional chore. I would rather be a door-to-door salesman than do work which appeared to be so demanding, yet dull.

By coincidence, my very first job on joining my current firm in 1958 was to work on our firm's first initial public offering (IPO) of stock to the public. A drugstore chain and a chain of ladies ready-to-wear stores were jointly forming a company to acquire large farmer's markets. The plan was to convert the locations into what became the prototype for the modem shopping mall. Each of the founders would sell its own product line, Many small specialty retailers would lease space and operate independent departments in the same building. The company planned to sell its stock over the counter. Literally. The proposed offering was not to be underwritten. The stock would be sold to customers, and anyone else interested, over the store's own counters.

The project turned out to be extremely interesting and glamorous. In addition to preparing all of the SEC filings relating to the stock offering, I had a full range of projects including preparing articles of incorporation and bylaws for the new venture, working on purchasing locations, preparing lease forms and operating agreements for the various specialty departments, drafting agreements between the two founders, establishing common rules for the operation of the store by the various retailers and arranging financing, among many other tasks. This project was my only assignment for several months, although it was in reality a wide range of diverse projects for one client group creating a business and taking it public.

I started with the one sample filing that was supplied by the assigning partner — my mentor, the late Morris L. Forer. The sample related to a plain vanilla underwritten debt offering of a publicly owned cement company. It provided little guidance for the very unusual offering that I was attempting to document. There were no closely relevant models to follow relating to either the company's intended business or the plan of financing. Needless to say, my first project presented many creative challenges.

After several months of intensive effort and many false starts, the company eventually completed its IPO through a conventional underwritten offering, having abandoned the plan to market its own stock through its stores. It went bankrupt a few years later — which served as a warning about the consequences of being too far ahead of one's time.

At the time my first IPO was completed, our firm had a second IPO client. Since I had some experience with this type of work and very little in the way of other assignments, I was the logical associate to work on the next offering. Throughout the new issue boom of the late 1950s and early 1960s, our office had a constant flow of IPO clients. Almost

continuously through my first few years of practice, my major current projects included at least one and sometimes a few IPOs in various stages.

In IPO practice, I worked directly with successful entrepreneurs and senior executives, who typically knew less about the offering process than I did. I found that such clients generally looked to their counsel for advice on offering-related business as well as related legal matters, and normally would follow my suggestions. Neophyte lawyers rarely had such extensive and rewarding contact with senior client personnel. I was intrigued that successful entrepreneurs paid substantial fees for the time it took them to teach mc how their businesses operated so that I, in turn, could tell their story in the traditional format of an SEC filing. There were, to be sure, some dull and tedious aspects of securities work, especially the seemingly endless drafting sessions. On the whole, however, I found this type of work to be challenging, gratifying, stimulating and educational.

Although I enjoyed securities work, I had a self-image of becoming a generalist lawyer, or at least a broadly experienced corporate/business lawyer. It was always my plan during those early practice years to finish the current IPO transactions and then branch into other types of work not related to securities practice. However, a combination of the firm's workload and scheduling requirements, as well as my own excitement with the glamour of securities offerings, kept me fairly heavily involved in securities work until another unplanned event impacted my career.

An Accidental Job Offer

After I had been in practice close to six years in late 1965,1 chanced to read an SEC newsletter that I did not follow regularly. I learned that one of my Supreme Court co-clerks, Charles "Chuck" Rickershauser, whom I had not spoken to since our clerkships ended in 1958, had recently been appointed to a very interesting job with the SEC's Division of Corporation Finance. Shortly after reading the news item, I had business at the SEC's office in Washington. When my meeting ended, it was too late to make the next train back to Philadelphia, and I had close to an hour to kill before the following train departed. I called Chuck in the hope that he might be in and available for lunch. He was.

He told mc about his intriguing position over lunch. The SEC Chairman, as well as a great many practitioners, felt that laws on the sale of securities and the requirements applicable to publicly owned companies was badly in need of modernization and reform. The SEC's Division of Corporation Finance, which administered those laws, seemed very satisfied with the status quo. The Chairman wanted an outsider to join the Staff, evaluate the whole structure of the law and make recommendations for change. Chuck told me that he had made a commitment to perform this role for 12 to 18 months. I envied his position.

Somewhat as an afterthought as we were leaving lunch, I asked him a poorly phrased question — something like: How does a fellow get a job like this? Because his job was clearly one-of-a-kind, 1 did not mean to inquire how I could get such a job. Rather, I was

interested how he happened to get the job, a point we had not discussed previously. He looked at me somewhat quizzically. After a pause, he asked me how I would like to have his job. I was nonplused. From our prior discussion, it was clear that he was due to remain in the position for at least nine more months, Nevertheless, my response was very positive.

He then told me in confidence that the Governor of California, his home state, had offered him the position of State Corporation Commissioner, This was the most important position in the securities regulation field at the time, second only to the SEC Chairman. My friend had explained his dilemma to the SEC Chairman and had requested relief from his commitment at the SEC. The Chairman had consented to my friend's early departure from his job on one condition — he had to find a qualified successor.

Although Chuck had not known before that fortuitous luncheon that I had any background or interest in securities law, he recommended me and I became that successor. I took a leave of absence from my firm and spent most of the year 1964 as Special Advisor to the Division of Corporation Finance — a division that felt absolutely no need to receive any outside advice.

Working the System

Brimming with excitement when I returned from my Washington lunch, I asked my wife how she felt about going back to Washington. We had lived there for a year during my Supreme Court clerkship and had many good friends in the area. At first she thought I was speaking about a brief visit and she responded favorably. When she asked for about how long, I said "Oh, about a year." Reacting with shock, she did not know whether to laugh or cry. At the time we had three young children, a relatively new house in the suburbs and many family and other ties to Philadelphia. It soon became clear that relocating the family to Washington for a year was not a viable plan.

I told the SEC Chairman that I was anxious to accept the job he offered to me if I could do it on a commuting basis. We agreed that I would work in Washington on Monday, Tuesday, Thursday and Friday. My agreed upon schedule was to arrive at my Washington office shortly before 11:00 a.m. on Monday and Thursday, allowing me to take the 8:00 a.m. Metroliner from Philadelphia, and to leave early enough on Tuesday and Friday to permit my taking the 4:00 p.m. Metroliner home. I would stay in Washington Monday and Thursday nights. Since my job involved primarily thinking and writing, we agreed that I could perform those tasks on Wednesdays from home in Philadelphia.

I was concerned that the travel expenses would consume a major portion of my salary. Not to worry, said the Chairman. He knew how to work the system. Although my job was in substance a full time position, I was appointed as an outside consultant, to work on a per diem basis. My assigned duty station as a consultant was Philadelphia. Therefore, in accordance with established government policy, the four days each week when I would be in Washington, I would be away from home and the Commission could pay my actual

transportation expenses and give me a standard per diem living allowance. The allowance was at the rate of $16 per day. On a prorated basis I was entitled to $28 — not a penny more or less, regardless of what I actually spent — for each two-day round trip. This living allowance led indirectly to by my becoming a writer of legal articles.

In those days, $16 was a marginally adequate, if somewhat skimpy, allowance for living a day away from home. However, the dynamics were different for me, since I received $28 and had only one night's lodging for each round trip. I arranged with the hotel nearest to the SEC to pay $8 per night, their cheapest rate, for which they would give me the best room available at the time I checked in. The hotel was an adequate one, if not elegant. My former boss, retired Supreme Court Justice Harold H. Burton, was still living in that same hotel in a small suite. He had lived there since he first moved to Washington as a U.S. Senator, and thereafter throughout his tenure on the Supreme Court.

Because I was accustomed to having lunches away from home on working days, my only incremental expenses for each round trip to Washington were one dinner on the first day, one night's lodging and one breakfast on the second day. After deducting my $8 hotel expense, I had $20 remaining for two meals. I ate my breakfasts in the SEC's subsidized cafeteria, where a mountainous morning meal, more than I could eat comfortably, cost less than a $1. This left me $19 for dinner. In those days, you could get an excellent full course dinner at a top flight restaurant for less than $10. I started a routine of enjoying my evenings alone at the best restaurants in town for a gracious full course dinner. After several weeks, my clothes began to feel tight. I discovered, not surprisingly, that I had gained several pounds and felt terrible. A new lifestyle was imperative. I did not relish spending evenings in a lonely hotel room. I began buying an extra sandwich in the cafeteria at lunchtime, which I would eat as a light supper at my office desk with a vending machine soda after the working day.

I had access to a great deal of unpublished law and lore about the SEC's administration of the securities laws. I filled many of my evenings in Washington, following my snack, by researching questions of interest. I also used the time to write the first of my articles, a two-part description of SEC reporting requirements which were very little known or used by the investment community at that time. The articles were well received and I had considerable satisfaction seeing my work in print. I also used the evenings writing about needed reform in the securities laws. Thus began my career as an author and sometimes friendly, and hopefully constructive, critic of various SEC policies.

By the time my SEC consultancy ended, I had learned a great deal about securities law. I was developing a reputation in that field and had begun to attract some clients for securities work. Upon returning to practice, eventually I gave up the goal of being a broadly based generalist. I accepted the reality that unplanned events had destined me to a fairly specialized practice focused on securities law.

My Own Quirks

I am aware of two personality traits that have shaped my career: a need to fix things and a love of teaching. If I see something broken, I feel compelled to try and repair it. This drive has led to a number of projects over the years involving my advocacy for changes — needed reforms in my mind — in the administration of the federal securities laws. (I might add that the urge to fix applies in my case primarily to the world of the law; as my dear wife can attest, I feel no such compulsion about chores around the house.)

Among my projects, I advocated the use of soft and forward-looking information in SEC filings at a time when such documents were restricted as a matter of SEC policy to objectively verifiable statements of historical facts. The law has evolved over the past 30 years as I have advocated. There has been a complete (or maybe, more accurately, a 180 degree) reversal. SEC filings, which had been confined fairly rigidly to historical factual information, currently may, and in many cases must, contain much forward-looking, subjective, predictive, evaluative and other "soft information" — a term I was the first to use in this context.

I wrote articles and gave speeches advocating that the SEC could and should eliminate some of the pressing problems and bring about needed reforms by administrative action, at a time when many of the leading securities lawyers and academics thought that legislation provided the only viable option for meaningful change. They felt that administrative tinkering could be counterproductive. They doubted that the SEC had the power or institutional will to adopt significant reforms administratively. They were wrong. In the intervening years, the SEC has accomplished massive beneficial reforms by changes in rules and forms as well as through other administrative actions. In contrast, the concurrent efforts during the 1970s to achieve legislative reform, through adoption of a Federal Securities Code to replace the existing statutes, proved to be largely abortive after ten years of effort.

In an article co-authored with Charles Zall, we proposed what we called the "I&I Defense" as a defense against potential horrendous civil liability when a company makes an innocent and immaterial error in an offer of securities intended to be exempt from Securities Act registration. After much intervening advocacy by me and others, 16 years later the SEC adopted a rule that embodied the substance of our proposal.

The other drive that shaped my career was a desire to teach and share my thoughts and ideas with others. This factor, along with the desire to fix things, provided a second motivation for much of my writing and speaking. I enjoyed teaching, both on the Continuing Legal Education (CLE) circuit and for several years at the University of Pennsylvania Law School. At one time, I had considered becoming a full time law school teacher, but I realized that I loved teaching what I regularly do. It would not have been the same for me to give up practice and teach about what *other people* do. I decided to remain a practitioner.

I was once very gratified when a friend from the SEC told me about their unusual hiring experience at the Penn Law School. When the SEC recruited at most schools, applicants typically expressed a preference for the General Counsel's office, where they would write

legislation and address broad issues of policy. At Penn, most preferred to work in the SEC's Division of Corporation Finance. My friend asked if I could explain the atypical response of the Penn Law students.

In that era, few of the law school teachers of securities law had practice experience in the field. I felt that their courses were overly academic and would not be particularly useful in teaching students the skills actually used by most securities practitioners in the private sector. Much of what securities lawyers did in those days was learned on the job, by experience, not in law books. I was a practitioner, and I tried to give my classes useful training to do what most practitioners do. I usually started the term by distributing copies of my latest IPO documents and inviting executives, investment bankers and others who worked on the offering to participate in a class discussion on how the job actually got done. I felt that the students' preference, when applying for SEC jobs, for the type of work I did, vindicated my efforts as a teacher.

I have published about 70 articles. Many were advocacy pieces, written to stimulate change in the federal securities laws. A number of my articles grew (and then grew more) from materials I had prepared for teaching at the Penn Law School, materials prepared for presentations on the CLE circuit or presentations prepared for office use. For example, early in my practice I gave a brief presentation to a CPA group on the going public process. My prepared text was several double spaced typed pages. When I decided to publish it, it grew to a law review article with extensive footnotes. [Footnote: *Going Public: Practice, Procedures and Consequences*, co-authored in its latest version with Joseph M. Manko and Robert S. Kant. This article was originally published in 15 Vill. L. Rev. 283 (1970) and was reprinted in updated form in 27 Vill. L. Rev. 1 (1981).] After an IPO, the management of our clients generally received a more or less standard letter from our firm describing the consequences of public ownership, including a description of all of the disclosure and other requirements applicable to a publicly owned company and its insiders. This letter, with technical footnotes and model timetables added, became another article. [Footnote: *Now That You Are Publicly Owned*..., revised in the latest version with Jason M. Shargel. This article was originally published in 35 Bus. Law. 1631 (1981).] These two articles have been updated periodically over the years and are distributed in pamphlet form by financial printers. In recent printer's booklet forms, they are each about 90 pages.

Occasionally, I have lightened the seriousness of my professional communications with some trivial poetry. I commented favorably on an SEC proposal to permit soft information in filings in one of the few poems in the English language published with footnotes by the author, not some later scholar. Opening stanzas included:

Disclosure thought's in revolution.
You've come up with a new solution.
Let's look back in history:
The main theme, liability!
Prospectuses were much like shadows,
Distorted, dull and flat.

We said of things we knew would happen:
"There's no assurance that..."
The picture was so negative,
The registrant seemed dead
The filings full of boiler plat,
Unreadable, unread.

I authored a corporate practice manual [Footnote: Pennsylvania Corporate Practice and Forms: The Wolf, Block, Schorr and Solis-Cohen Manual] which begins each chapter with a short poem. Here is a sample that begins my chapter dealing with the boilerplate clauses that typically come at the end of an agreement:

The ending stuff gets little thought,
Like notice, gender, choice of laws.
If badly done you may get caught
With a provision full of flaws.
A section declares who is bound
That often receives no discussion
Or where the full contract is found —
A clause that can have repercussion.
On these sections we call miscellaneous —
A thought that is worthy of mention:
To the deal, a wee bit extraneous,
These clauses still merit attention.

I received the Dennis H. Replansky Memorial Award given by the Philadelphia Bar Association to recognize superior legal talent and professionalism; unique contributions to and significant achievements in both the Philadelphia business law community and civic and charitable causes; and his reputation for mentoring young attorneys. My acceptance ended as follows:

I was honored and humbled the day I was told
I'm selected as lawyer in Dennis' mold.
Having labored in practice — its now 40 years —
What could mean more than the vote of your peers?

I've written and spoken when changes are due,
I've passed on ideas to a colleague or two.
I leave you to ponder, for better or worse,
Some thoughts on the law and some doggerel verse

I wrote an article suggesting that there should be limits on the existence of a duty to update prior disclosures solely and simply because the facts changed after a company published a true-when-made non-predictive disclosure. Among considerations, an uncertain duty to update is a major deterrent to a company's voluntarily initiating the

disclosure process on a fluid situation such as an acquisition negotiation — a highly undesirable result. The article concluded as follows:

When a past statement's true and the subject's still live,
Does a duty to speak come from Rule 10b-5?
Some would say more info always is due,
I say sometimes "maybe," but sometimes "not true."
Making someone tell more a knee jerk reaction,
Won't, in the long run, produce satisfaction,
Since all who still have the "no comment" right
Will choose, on the substance, to keep their lips tight.
An inflexible duty to update is errant,
It poses a first time disclosure deterrent!
But giving a snapshot in time may be groovy
If publisher needn't begin a new movie.
So let's not permit legalistic paralysis
By stating flat duties with little analysis.
Be more analytic, see what was first stated.
Should everyone realize that it was time-dated?
From what was said prior, what inferences flow?
Should investors infer there's no change, status quo?
For that type of info they should know the score.
If facts are now different they need to have more.
But if earlier picture's a snapshot in time