



AM COUNSEL BULLETIN



"The Newsletter of the American Counsel Association"

Winter, 2011

ACA CALENDAR

February 11, 2011
ACA Midyear Dinner
Capital City Club
Atlanta, GA

August 8, 2011
ACA Annual Dinner
Royal Canadian Yacht Club
Toronto, Ontario, Canada

ACA HOSTS SUCCESSFUL ANNUAL MEETING IN SAN FRANCISCO, CA

The American Counsel Association hosted one of its most successful annual meetings August 7 - 9, 2010 in San Francisco, California, in conjunction with the annual meeting of the American Bar Association.

On Saturday, August 7, members and their guests enjoyed a guided walking tour of Chinatown, followed by a dip sum Chinese luncheon at the Imperial Palace. Our colorful tour guide was Shirley Fong-Torres, cook, food critic, author, and sister of Benjamin Fong-Torres, editor of *Rolling Stone* Magazine. On Sunday, August 8, ACA members and guests attended, along with international guests from England, Italy, Germany and Canada, the annual President's Reception held at Waterbar, rated as the Bay Area's top new restaurant. After enjoying a variety of delicious hors d'oeuvres and refreshments and the incredible view of the Bay Bridge, approximately thirty members and guests stayed for a spirited dinner.

On Monday evening, August 9, the ACA hosted its traditional black tie optional Annual Dinner at The St. Francis Yacht Club. The St. Francis is located adjacent to the Golden Gate Bridge and Na-



ACA 2010 Annual Meeting—San Francisco, CA

tional Recreation Area with views of Alcatraz and Marin Headlands. The dinner featured multiple courses served with select wines for the approximately sixty members and guests who attended. As always, the chief entertainment consisted of the members' introductions and toasts, and camaraderie reigned at a high level. The members also elected officers and directors for 2010-2011 and awarded scholarships to two outstanding and deserving law students.

As in the case of the 2009 meeting in Chicago, each of our annual meeting events in San Francisco was "sold out." In addition to our corporate sponsor Lexis/Nexis, the ACA is also grateful to

the following law firm sponsors for the Annual Dinner: The General Counsel of the Bar of England and Wales; Horton, Shields & Knox, P.C.; Ogletree, Deakins, Nash, Smoak & Stewart, P.C; Reed Smith LLP, Willkie, Farr & Gallagher, LLP; Outer Temple Chambers and Heenan Blaikie.

The ACA also owes a debt of gratitude to Richard Cassidy of Burlington, Vermont for his outstanding service as ACA President for 2009-2010. During Rich's tenure the ACA made significant strides including increasing its US and international memberships and strengthening its financial position.

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THE PRESIDENT'S TWO CENTS

Bernard Amyot, ACA President

I am honored to serve from August 2010 to August 2011 as President of the American Counsel Association, the oldest association of independent law firms in the world. For 80 years, our association has supported scholarship, professionalism and camaraderie among its members.

Every year we are proud to support talented law students who are in financial need by providing scholarship assistance. Some very fine lawyers serve justice today at least in part because of the generosity of our members.

Even in this age of electronic networking, we focus on direct personal connections among our members. Our membership is intentionally small, but a large portion of our group gathers twice a year to spend time and enjoy one another's company in connection with the American Bar Association's MidYear and Annual meetings. Membership in the ACA is generally limited to members of one law firm per metropolitan area.

Although we are "American" by name, in recent years we have become a truly international organization, as lawyers from around the world have sought to join us. Being myself a Canadian lawyer practicing in Montreal, and the second "foreign" leader of this great Association, I can readily attest to the inclusive and welcoming nature of the ACA. Over the years, I have learned to truly appreciate the value of membership and have made long time friendships with great people such as past presidents Barbara Howard, Pamela Bresnahan, Gerard McDermott, Randall Noel, Wes Horton, Stanley Cohn, Buddy Menton, Tom Bolt and James Dorsett, just to name a few. We are particularly fortunate to have developed a close relationship with the European

Circuit of the English Bar. It organizes annually an international conference and continuing education program co-sponsored by our two organizations. Our recent meeting was held in November in Paris (www.europeancircuit.com). The meeting featured excellent speakers and, in partnership with the Barreau de Paris, visits to the courts and a warm welcome to all.

I participated in last year's EC-ACA Conference in Warsaw and can say this is a great formula to learn more about each others' experiences in the law and expand one's network. We are in discussions with Randolph Ferguson, the President of the European Circuit and Past President Gerard McDermott, to organize a Conference on this side of the pond in May 2011 in Montreal, to enable more of our members to participate and show our European friends a taste of North American hospitality and joie de vivre!

We look forward to continuing to expand our international membership and to continuing cooperation with our international partners.

Our 2010 Annual Dinner, held at the St Francis Yacht Club, was a gala event presided over by my predecessor, friend and neighbour Richard T. Cassidy, of Burlington, Vermont. Some 60 of our members with their spouses and guests enjoyed fabulous views of the San Francisco Bay and Golden Gate bridge, a wonderful cocktail hour and a delightful meal. Of course, as is our long tradition at our annual dinner, each member introduced him or herself in a humorous vein and I had the chance to honour outgoing President Cassidy and hand him his very own No. 1 Habs jersey, bearing a "C" on his heart for having been such a great Captain of the ACA over the last year.

In San Francisco, we also had an

elegant President's reception at the world renowned Waterbar Restaurant where many guests prolonged the cocktail hour into a delicious dinner thereafter.

All in all, it was a great meeting. Plans for 2011 include a fine dinner at the ABA MidYear meeting in Atlanta at the exciting Capital City Club on the evening of February 11. And, of course, we will have a full schedule of events in conjunction with the ABA Annual Meeting in my home country this summer. I look forward to welcoming you all in Toronto on that auspicious occasion and prove to all that you are "One nation under Canada"!

My President's Reception will take place at the very top of the CN Tower in the heart of downtown Toronto, where we will have a spectacular view of Lake Ontario, and will be able to see Buffalo, New York on a clear day, so that our American colleagues do not feel too far away from home! And our Gala event will take place on August 8, 2011 at the Royal Canadian Yacht Club on Toronto Island where my successor, President-Elect Howard Daniel of Greenville, South Carolina, will be confirmed as the Commodore of the ACA for 2011-2012!

I look forward to spending time with as many members of our Association as possible at this year's events. If you are a member, we hope you will find your way to at least one event. If you are a lawyer, but not a member, please do not hesitate to contact me or President Elect Daniel who would be happy to explore the possibility of membership with you.

PARIS IN THE FALL

Wesley W. Horton

Chloe and I attended the annual ACA. European conference held every fall in conjunction with the European Circuit of the Bar of England and Wales. This past fall the conference was held November 18-20 in Paris at the Maison du Barreau, the elegant headquarters of the Bar of Paris. The existence of the annual conference is thanks to ACA, past president

Gerard McDermott, one of the founders of the European Circuit, which includes those who practice before the European courts in Luxembourg and Strasbourg.

I was the only American lawyer in attendance this year (Pam Bresnahan and Barbara Howard have been regulars but had unavoidable conflicts). ACA members

from England, Germany, Italy and France also attended, along with a number of other members of the European Circuit and the Paris Bar.

We all met Thursday evening at the headquarters of the Automobile Club of France at the Place de la Concorde. Friday morning we walked to the Palais de

ACA AND LOWELL JACOBSON SCHOLARS ANNOUNCED

As always, the true highlight of the ACA's Annual Meeting was the announcement by Scholarship Committee Chair Pamela Bresnahan of this year's ACA and Lowell Jacobson scholarship winners. Each year the Association pre-

sents scholarships to two students who exemplify scholarship, financial need, and commitment to public service.

The George Kerr American Counsel Scholarship of \$5000 has been presented to Terra White of Northwestern Law School. Despite her own challenging circumstances, Ms. White worked tirelessly to provide pro bono services to others, while attaining an impressive class rank.

The Lowell Jacobson Scholarship of \$2500 has been presented to Katherine C. Jahnke of the Chicago-Kent College of Law. Ms. Jahnke also achieved a lofty class ranking while providing public service despite the most challenging of personal and financial circumstances.

A cornerstone of the ACA's mission is to assist young lawyers entering the profession, and one of the Association's chief means is the provision of financial aid to deserving and needy law students. Members are encouraged to give generously to the American Counsel Association to enhance its scholarship awards.



Terra White—The George Kerr ACA Scholarship



Katherine C. Jahnke—Lowell Jacobson Scholarship

Considerations in Lateral Partner/Group Acquisitions

Kenneth E. Young and Barbara Mendel Mayden

Bad economic times are said to be the best time to selectively buy stocks and real estate. While the economic downturn that began in late 2007 has had catastrophic effects on law firms large and small in the form of reduced revenues and layoffs, it has also provided opportunities. Examples include lawyers—individually and in groups—taking their clients and “jumping down” from large international firms with high overhead to regional firms where they can offer their clients lower rates or stem continued pressure to raise

rates. Lateral partners and groups with portable business can create an entirely new practice group for a firm, strengthen an existing one, and greatly bolster the reputation of the acquiring firm.

Risks in Lateral Acquisitions and Mergers • *The Obvious: Economic Investment*

There is a reason many firms prefer to acquire a group or merge early in their fiscal year. Salaries of the acquired attorneys and staff begin immediately, as do hard costs like office space and

computers, but it takes months for collections to catch up with the initial hours billed at the acquiring firm. Receivables usually stay with the group's former firm in the lateral acquisition situation. In mergers and acquisitions of entire firms, however, the receivables transfer to the surviving entity.

The group moving to the new firm will also have “downtime” spent getting acclimated to new systems and getting to know new partners, not to mention

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Considerations in Lateral Partner/Group Acquisitions *(Continued from Page 3)*

dealing with clients on the many issues involved in successfully moving them to the new firm. If there are unforeseen snags and clients balk at moving firms or the anticipated business does not materialize, the hoped for returns can quickly turn into real losses. And all the vetting in the world cannot anticipate market forces such as the recent recession; witness the many national and international firms which acquired groups and opened offices in Charlotte, North Carolina, in the early 2000s due to the then flourishing bank and securitization work, only to close them in 2008 and 2009.

• *Vetting Prospects Properly*

Vetting the professional history and book of business of a lateral partner, a lateral partner group or a firm is complicated by many factors, not the least of which is that the very information the acquiring firm needs to know to make a sound business decision may in fact be proprietary or privileged information that subjects the departing partner/group *and* the acquiring firm to liability. Generally, the acquiring firm will need access to the following areas regarding lateral candidates and groups: (1) personal and professional history; (2) potential conflicts; (3) anticipated portable business; and (4) obligations to the prior firm.

With regard to personal and professional issues, the internet is an increasingly useful source. The only professional information that is sometimes hard to obtain is information that prior firms never made public. Of course, all applicable employment and privacy laws and regulations must be observed.

With regard to conflicts, most law firms interested in talking to a lateral, a group, or another firm will agree up front to keep their discussions confidential and preliminary until all potential conflicts can be examined. And aside from technical conflicts, there may be clients involved whose policies dictate their law firms cannot represent competitors. No one wants to waste valuable time and energy on discussions if conflicts and the policies of major clients are doomed to derail the talks.

Rewards in Lateral Acquisitions and Mergers

• *Market Dynamics*

There are a number of interesting dynamics at play in the current legal environment. Once it was an exception for a partner to leave a law firm, but today's lawyers have never been more mobile. Some are attracted by a firm's large geographical footprint, a better practice platform, or a more entrepreneurial business platform. Partners increasingly question if they are practicing in an environment that best suits the needs of their clients. Similarly, gone are the

days of firms assuming they own the client. During 30 years of practice, we each had many general counsels tell us that he or she hired "lawyers," not "law firms." Institutional loyalty in many cases has given way to the lowest bidder or best service provider.

Add to the mix the fact that the executives and in-house counsel for clients are turning over far more frequently than in years past, which requires partners in charge of the client's work to be even more nimble in making sure the client's existing needs/requests are met. If a client hires a new GC who implements billing guidelines or other policies that the firm which had represented the client for years disagrees with, the partner in charge of the client's work may have no choice but to examine a lateral move to a firm whose philosophy better suits the client.

• *Seizing Opportunities*

There are several categories of firms "seizing the day" in the current market. Some have little debt and see today's market as the perfect opportunity to grow with partners bailing out of financially unstable firms. No partner appreciates a steady draw as much as one who has rarely had one.

Regional firms continue to enjoy growing with partners "jumping down" to platforms with no Hong Kong overhead and little pressure to bill at higher rates than their clients can bear. Our experience has been that these partners rarely have to accept less compensation when they jump because the regional firms have less overhead to sustain. And firms with some international offices are strategically merging with firms in other cities around the world where synergies and opportunities for client development exist. The continued mergers of U.S. and UK firms is but one example.

In summary, the greatest rewards in these situations are when the acquiring firm or merged entity emerges better able to meet the needs of important clients, succeeds in implementing a previously adopted strategic plan, or improves profitability. But being bigger simply for the sake of being bigger is rarely the goal.

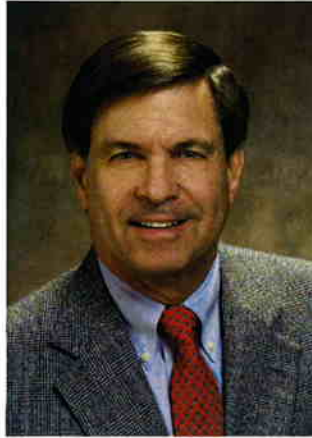
Ken Young is an ACA member. He and Barbara Mendel Mayden are the principals of Young Mayden, LLC, a boutique firm providing services in the areas of legal search, consulting, and career counseling.

ACA Member Profile: J. Howard Daniel President-Elect, Greenville, SC

The American Counsel Association at its Annual Meeting in San Francisco elected Howard Daniel of Greenville, South Carolina as President-Elect. Howard is with the national labor and employment firm of Ogletree, Deakins, Nash, Smoak and Stewart, P.C. and is a member of its Board of Directors.

Howard has served as a Board member of the ACA since 2008. In South Carolina, he has served as Vice Chair of Economic Development for the Greenville Chamber of Commerce in 2003 and 2004. He also served as Chairman of the Chamber in 2007. Howard is a Member of the Davidson College Board of Visitors and served as President of the Board of Directors of the South Carolina Governor's School for Science and Mathematics Foundation in 2008-2009.

In an interview with the *Am Counsel Bulletin*, President-Elect Daniel responded:



What are your thoughts in general on ACA, the oldest organization of independent law firms? The ACA is a wonderful group of talented and collegial lawyers. The network of friends and colleagues within ACA makes one feel at home and welcome; which with larger organizations would be impossible.

How did you first become acquainted with ACA? Mac Greaves asked his brother, Tim, and me to join many

years ago and when I saw Jim Dorsett was a member I decided to join anyway, just kidding. Actually Jim and I were fraternity brothers at Davidson so it has been great reconnecting with him and others.

What has been the greatest value of ACA membership to you? The fellowship and friendships are what mean the most to me. I look forward to the meetings so I can catch up with friends. I have been able to refer members a number of matters over the years. I also think it is important that we work to raise money for ACA's scholarship program.

What is your vision for ACA? I hope to continue to assist ACA in finding quality members who will be involved and support the mission of ACA.

What would you like to accomplish during your term as ACA President? I hope to grow the membership and continue to recruit sponsors to help defray the cost of the events.

PARIS IN THE FALL

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Justice, an enormous building near Notre Dame Cathedral, to watch the Cour d'Appel (the three-judge Court of Appeals) in action. The court is both more formal (the lawyers and the clerks as well as the judges wore robes; the lawyers made speeches uninterrupted by the judges), less formal (the lawyers approached the bench without leave; lawyers in other cases talked to the clerk during the proceedings), and wildly different from American appellate courts (the defendant in the criminal appeal we were hearing was questioned by the judges before the lawyers made their pitch; the victim's lawyer as well as the prosecutor spoke).

On another matter, the Cour d'Appel heard evidence from the defendant and oral argument by the lawyers on whether

he should be granted bail pending appeal, a matter American courts would normally handle without testimony or argument. The court took the papers and said it would decide the matter at a precise time one week hence.

Friday afternoon and Saturday were devoted to presentations at the Maison du Barreau, including differing national approaches to arbitration proceedings and to innovative legal practice vehicles, such as partnerships between lawyers and accountants. The panel Gerard and I were on concerned the use of precedents of other countries in local courts. For example, if there were no precedents in Connecticut or English courts, should a lawyer cite a favorable precedent from, say, the Cour de Cassation (Supreme Court of France)? The Francophone

panelists were obviously very enthusiastic about our doing so; Gerard and I were more measured in our enthusiasm. The conference dinner was held Friday night at the Cercle de l'Union Interalliée, an ultra-fancy club formed as an outgrowth of the Great (First World) War. I believe the first course was brains in aspic surrounded by rabbit pâté, but I might be mistaken.

There were preliminary talks about holding next fall's conference in Geneva, Dublin or even Paris again. American lawyers really should attend these conferences. If you are exposed to twenty legal ideas that you had not thought of before and only two of them make sense on this side of the ocean, those two would justify the trip, as if Paris (or Geneva, or Dublin) would not justify the trip on its own.