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China – Law Firms

Mentors To Chinese Companies

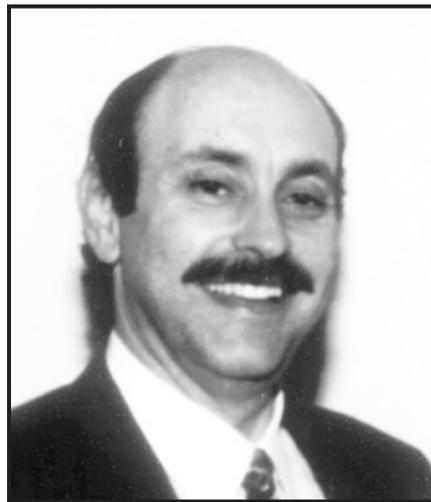
The Editor interviews Dean L. Silverberg, and Frank C. Morris Jr., Members, Epstein Becker & Green P.C.

Editor: Please tell our readers about your background and professional experience.

Silverberg: I graduated with a B.A. (with honors) in 1974 from Binghamton University, part of the State University system in New York, received my J.D. in 1977 from Brooklyn Law School and my LL.M. degree (with honors) in Labor Law from New York University School of Law in 1986. After graduating from law school in 1977, I was an Assistant Corporation Counsel with the City of New York in the General Litigation Division where I worked on general litigation matters, discrimination litigation and related lawsuits in state and federal court, and labor relations and personnel matters. In late 1980 I was employed by the New York City Health and Hospitals Corporation, specifically Bellevue Hospital Center, where I was Director of Labor Relations for a facility with approximately 5,000 employees and 1,200 beds. I was thereafter asked to join the then New York City Mayor Ed Koch as Deputy Counsel from 1983 until 1986.

In the spring of 1986 I came to the New York office of Epstein Becker & Green, and became a shareholder in 1989. I am in the labor and employment law department of the firm. I practice in the area of employment litigation, collective bargaining, and human resource consulting and training. Besides consulting and advising clients and designing personnel policies and protocols for them, I also do a fair amount of training and speaking to clients in all industries regarding best practices in human resource and personnel management.

Morris: My undergraduate education was a B.S. from Northwestern University where I graduated with honors. I then went to the University of Virginia Law School and received my J.D. and was awarded the Shawe Labor Law award. After law school, I became an enforcement attorney in the Appellate Court Branch of the National Labor Relations



Dean L. Silverberg

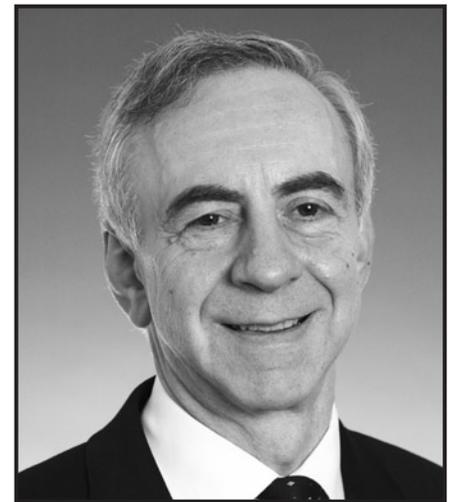
Board. While there, I had the opportunity to litigate in every U.S. Circuit Court of Appeals as well as the U.S. Supreme Court.

I was recruited by Ron Green from a Washington labor and employment firm in 1978. I head EB&G's labor and employment practice in Washington and co-chair our national disability practice group. My practice covers counseling and litigation and the full range of employment, benefits, and traditional labor matters, as well as disability litigation that extends into the public accommodation area under Title III of the Americans With Disabilities Act and the Fair Housing Act.

In the last several years I also have been advising on, investigating and litigating Sarbanes-Oxley and other whistleblower matters. We have had the opportunity to litigate some precedent setting SOX cases. I've had the distinct honor of speaking at federal circuit Judicial Conferences for about half of all of the federal trial and appellate judges on disability and employment law developments.

Editor: How did the firm become involved with the Bank of China in designing the special program for Chinese companies?

Silverberg: We have been working with the



Frank C. Morris Jr.,

Bank of China as its labor counsel for approximately five years, representing them in their two New York branches as well as in their Los Angeles office. As we have seen, we felt a need to be more involved with the Chinese companies, to assist them as they entered the U.S. markets, and we planned a series of seminar programs in the U.S., co-hosted and jointly presented with the Bank of China. We believe we have the experience and expertise to put on these presentations in order to assist the Chinese companies to act in full conformity with applicable U.S. laws, as well as any state or local laws in the jurisdictions where they are operating. We targeted Chinese businesses doing business in the markets where we saw the greatest concentration of Chinese business – New York, Los Angeles and San Francisco.

Editor: Please tell us about what you did in China in talking with companies thinking about coming to the U.S.

Morris: Most recently we had the opportunity in conjunction with a leading Chinese law firm, Zhong Lun, to present our program to approximately 80 Chinese business men and business women in Shanghai and to another 50

Please email the interviewees at dsilverberg@ebglaw.com or fmorris@ebglaw.com with questions about this interview.

in Beijing. The programs dealt with labor and employment law and litigation in the U.S. to provide Chinese businesses with an understanding of the issues they need to address to operate successfully in a quite different legal environment. The U.S. is a litigation prone society, unlike China. China also has a mandatory arbitration requirement before formal litigation proceeds versus possible voluntary alternative dispute resolution in the U.S.

We were able to see a number of the largest companies in China which have both substantial and nascent U.S. operations and those that are exploring U.S. operations. We made presentations and answered questions on how to construct a U.S. business that would use the best corporate structure, be highly productive and in compliance with U.S. laws and follow best practices in connection with both labor and employment and corporate governance matters.

Silverberg: Our return trip to China this October also had as its purpose meeting with several of the businesses we had previously met in June when we had put on a number of presentations and seminars. They wanted to talk about doing business in the U.S.

Editor: What materials did you develop for your presentations?

Silverberg: We put together a formal program using a power point presentation in Chinese which we e-mailed to the participants. We also took with us materials from our labor and employment department here which were translated into Chinese. Two other shareholders from the firm also joined us on this trip, Bob Groban, who is head of our immigration department, and Sharon Ferko, who is with our corporate group specializing in mergers and acquisitions and international work. She also counsels clients in the area of best practices for compliance.

This past August we hired a Chinese attorney who had practiced in Beijing for two years before attending law school in the U.S. and is now admitted to practice law in New York. He has been instrumental in helping our firm in the China Initiative, translating all the materials. He was also very helpful in assisting us in understanding the Chinese business and social cultures, and working with our law firm counterparts in China to make sure everything was running smoothly for the seminars and our other appointments. He affords our Chinese clients the ability to communicate with us in Mandarin or English.

Editor: How did you handle the issue of U.S. immigration laws?

Silverberg: Mr. Groban is a former assistant U.S. attorney who was responsible for immigration matters. He is able to counsel companies on the types of visas required and the manner in which someone would acquire a

permanent residence or appropriate work authorization permit. Mr. Groban runs the immigration department from our New York office, a sizeable practice for the firm. He advises on what the alternatives for individuals are, in what capacity they can come to the U.S. and how to ensure strict compliance with all of the immigration laws and regulations. With Mr. Groban's assistance, Chinese companies who want to bring people to the U.S. can do so, in full compliance with American immigration laws, and as expeditiously as possible.

Morris: Even the timelines for starting operations can be affected by immigration issues. We advised on the time needed to complete the immigration process to avoid delays in their start-up plans. If Chinese companies are acquiring businesses in the U.S., that, too, can pose immigration issues because certain visas are specific to one employer. Immigration clearance for working at the new entity is required so Chinese companies which would acquire or might merge operations with a U.S. company need to perform due diligence on these immigration issues.

Editor: Do you get the sense that the Chinese government is promoting Chinese investment abroad?

Silverberg: Yes, we do. We see it in terms of the large turnout we had in our two primary seminars in Beijing and Shanghai. We had attendance of approximately 130 people, including representatives of the biggest companies in China in financial services as well as high-end IT, manufacturing, healthcare and service industries. A number of individuals, who were the senior leadership of trade organizations, were there on behalf of another several hundred companies to whom they indicated they intended to distribute the information we were providing. We were also invited to speak before an association of the private petroleum industry companies in China.

Editor: Do you see a greater understanding on the part of Chinese companies in terms of protecting intellectual property rights since they, too, have rights that need protecting?

Morris: During our presentations I addressed the fact that if you are going to operate in the U.S., you should have agreements that protect your trade secrets and proprietary information. We also discussed how those agreements are enforced in the various states. In addition, we explained how non-competition agreements may be used with respect to key employees. Our observation was that the development of the Chinese economy is creating valuable intellectual property. The fact that the Chinese will increasingly have valuable IP should engender more uniform protec-

tion for all IP owners.

Editor: My understanding is that the Chinese have laws against piracy that are being enforced to a degree.

Morris: Yes, but you have to put in context that the litigation that you might commence in the U.S. against piracy is not so common in China and there is not such a developed body of precedents. Once laws are in place, then enforcement follows. It can take time to develop the law in any area including enforcement of anti-piracy regulations.

Editor: The Whistleblower provision of Sarbanes must be a difficult concept for Chinese to grapple with.

Morris: Yes, that is why we specifically addressed that issue during our programs and meetings. I explained that Sarbanes-Oxley imposes specific requirements which cover those Chinese companies that are listed on a U.S. stock exchange and others that will have to file reports under Section 15(d) of the Securities Exchange Act. It is fair to say that Sarbanes-Oxley has engendered both study of and concern with those standards in other nations. Transparency in Chinese business has not been the same as in the U.S. We emphasized the importance of setting up an appropriate compliance program, pointing out it is good business that would enhance their ability to be active in the capital markets here. It would also enhance their ability to have a business that would be attractive to partners and joint ventures as Ms. Ferko explained.

Silverberg: We set up a roadmap in our materials which includes the issues that might arise for any business thinking of moving into the U.S., providing suggestions as to how a company can adopt best practices and try to ensure good compliance.

Morris: In the program and materials I covered litigation and discovery – topics that were of great interest because, e.g., a Chinese subsidiary litigating in the U.S. may have discovery extend back to the parent in China. It is also possible that the decision makers in China will be called to testify in the U.S. These topics had been of interest on our prior trip to China and we were able to expand our discussion of them.

That was also true in June when I was invited with a small group of American lawyers on behalf of the American Law Institute-American Bar Association (ALI-ABA) to speak at the Shanghai Jiaotong Law School with regard to American law and litigation and Chinese commercial development. I was extremely impressed by the legal knowledge of Chinese law students about the U.S. system. They have an outward approach to their studies and interests which bodes well for their future as part of the global economy.