



Atlantic Legal Foundation

BULLETIN

February 2001

Congratulations, Dick Cheney and Donald Rumsfeld

CONGRATULATIONS and best wishes to Dick Cheney and Donald Rumsfeld in their continuing service to our country. ALF was privileged to represent Vice President Cheney and Secretary Rumsfeld before the United States Supreme Court in the Burma Sanctions case. In that case, ALF represented a bipartisan group of approximately 30 prominent foreign policy and international trade officials serving in every administration from

President John F. Kennedy to President Bill Clinton, including former President Gerald Ford, former Secretaries of State, Defense, Treasury, and Commerce, former Attorneys General, as well as U.S. Trade Representatives, National Security Advisors and White House Chiefs of Staff, as "friends of the court" in a case successfully challenging the power of a state to adopt legislation that interferes with the conduct of U.S. foreign policy. In

addition, Secretary Rumsfeld was the recipient in 1997 of ALF's Annual Award, which has been given each year since 1988 to an individual who exemplifies the ideals and principles of public service and private enterprise. Other past ALF honorees include Norman Augustine, Mayor Rudolph Giuliani, Alfred C. DeCrane, Jr., Steve Forbes, Carla Hills, Walter Wriston and the late William Simon.

Litigation Against New York City Successfully Concluded

After eight years of discovery and motion practice on behalf of several New York City property owners, ALF recently negotiated a successful settlement of its suit challenging the City's complex tax reimbursement scheme as unconstitutional. According to a former City Housing Department official, as reported in the press, ALF's suit was a major factor in forcing the City to alter its oppressive bureaucratic mechanisms which prevented property owners from obtaining tax refunds to which they admittedly were entitled.

Under the City's Senior Citizen Rent Increase Exemption program, as it existed before ALF's litigation, owners

of buildings with rent-controlled or rent-stabilized apartments occupied by senior citizens of limited income were prohibited from raising the rent, but were to be compensated in the form of real estate tax abatements or, in some cases, a cash refund. However, the process for claiming the tax credit or cash refund was exceedingly burdensome and the payment of cash refunds was often delayed for months or years while the City "audited" the owners' rent records.

As a result of this case, the City has simplified the application process, credits tax abatements promptly, no longer requires an "audit" prior to crediting the

owner's tax account or making payment of the cash refund, and makes the cash payment within weeks of the filing of forms.

One ALF client commented: "ALF fought hard for me and other property owners to force the City of New York to correct its capricious refusal to grant tax refunds. We are grateful for ALF's skillful representation."

In addition to adopting major modifications in its tax refund procedures, the City agreed that ALF was entitled to an award of attorneys' fees as counsel for the prevailing party.

ALF Sues Department of Commerce, Office of U.S. Trade Representative

Representing members of an Industry Sector Advisory Committee for Chemicals and Allied Products, ALF is seeking injunctive and declaratory relief to enable representatives of the U.S. chemical industry to advise U.S. trade officials regarding the negotiation and implementation of trade policies.

When the issue was first litigated, prior to the Presidential campaign, the Administration agreed that committee membership had been limited by Congress, in the Trade Act of 1974, to producers, thus precluding sector com-

mittee membership for environmental organizations and other "special interests". As the campaign heated up, however, the Administration abruptly and without explanation did an about face. It refused to convene meetings of the Chemical Sector Advisory Committee – which for years had met on a monthly basis – and sought the nomination of an "environmental representative" to the Committee, even though the Committee's charter and the Trade Act limits membership to producers. Other trade advisory committees provide for

membership of environmental interests. The upshot is that international trade experts representing many producers of chemicals and allied products are frozen out of the negotiation and implementation of international trade agreements.

Because of the importance of upcoming negotiations with Singapore and Chile, ALF has requested an order permitting the committee members to function as mandated by the Trade Act and a declaration that committee membership be limited to producers.

Property Owners Represented By ALF Score Victory In Case Challenging New York's Abuse of Eminent Domain

On January 18, 2001, Judge Harold J. Baer of the United States District Court for the Southern District of New York issued a preliminary injunction against the use of eminent domain to condemn private property in the Village of Port Chester; he also held that the request for a preliminary injunction involving property in East Harlem was premature as it is not yet in imminent danger of seizure. Judge Baer found that the property owners have a likelihood of success in their challenge to New York's lack of personal notice to people whose property is to be condemned. The ruling is encourag-

ing for the property owners, who are challenging the illegal taking of their properties by the government.

Atlantic Legal Foundation and the Institute for Justice represent three property owners in this case. The Minnichs, who are part of a neighborhood association which has been represented and counseled by ALF for approximately three years, own a custom woodworking business in East Harlem threatened by the Empire State Development Corporation's East River Plaza Project, a proposed indoor shopping mall. William Brody owns commercial buildings that

the Village of Port Chester wants to take for a parking lot for a shopping center. St. Luke's Pentecostal Church has lost what was to be its permanent home to the North Hempstead Community Redevelopment Agency.

The lawsuit challenges, on constitutional due process grounds, the failure of the New York State Eminent Domain Procedure Law to provide for timely and personal notice to property owners, without which the owner is unable to defend his or her legal right to the property.

New Members of ALF's Advisory Council

ALF's leadership recently was enhanced by the addition of four new members.

Ronald Hart, Ph.D. is Director Emeritus of the National Center for Toxicological Research and Distinguished Scientist in Residence, United States Food and Drug Administration (retired). He is currently adjunct professor of Cancer Prevention at the Strang Cancer Research Institute of Rockefeller University. Dr. Hart developed the first direct proof that DNA damage was causal in cancer etiology, established much of the modern basis for the role of food intake on aging and degenerative disease and chaired, among many others, the White House Consensus Policy on Chemical Carcinogenesis.

Hamilton Osborne, Jr., Esq. is a member of Haynsworth Sinkler Boyd, P.A. in Columbia, S.C. A graduate of Princeton and Yale Law School, where he was an editor of the *Yale Law Journal*, he special-

izes in business litigation. Mr. Osborne has served as a member of the City Council of the City of Columbia and is the current mayor pro-tem.

Philip R. Sellinger, Esq. is a member of Sills Cummis Radin Tischman Epstein & Gross, P.A. in Newark, New Jersey. He chairs the firm's Complex Litigation Department and is a former Assistant United States Attorney and Clerk to Hon. Anne E. Thompson, Chief Judge, U.S. District Court for the District of New Jersey. Mr. Sellinger is a graduate of the University of Massachusetts and New York University Law School. He specializes in insurance coverage and technology litigation.

Barry H. Smith, M.D., Ph.D. is Director of The Dreyfus Health Foundation; a member of the board of directors and Senior Vice President, the Rogosin Institute at the New York Presbyterian Hospital – Weill Medical College (Cornell) Medical Center,

New York, New York and President of the Rogosin Research Foundation. He is also Professor in the Department of Surgery, Cornell University Medical College/New York Hospital. He is a member of the American Association for the Advancement of Science, the Society for Neuroscience, the International Brain Research Organization, the New York Academy of Sciences, the American Public Health Association, the Global Health Council and the International Organization of Psychophysiology. Dr. Smith is Co-Editor, *Encyclopedia of Neuroscience*, Associate Editor, *Journal of Neuro-Oncology*, Reviewer, *Journal of Critical Care Medicine* and is the author of over 100 publications in the fields of neuroscience, organ transplantation and public health. He received his B.A. from Harvard, his Ph.D. in Biology from M.I.T. and his M.D. from Cornell University Medical College.

Of Note

The Florida Supreme Court, no longer distracted by minor election cases, granted ALF's motion to file an *amicus* brief on behalf of four renowned scientists in a "sound science" case involving a claim of

birth defects allegedly caused by a chemical. In another case, the California Supreme Court granted ALF's motion to file an *amicus* brief on behalf of several prominent scientists regarding the propri-

ety of certifying as a class action a claim for "medical monitoring" costs when there are no symptoms of disease.

* * * *
Visit us on the Web at
www.atlanticlegal.org

Atlantic Legal Foundation 205 East 42nd Street New York, NY 10017 (212) 573-1960 Fax: (212) 573-1959 www.atlanticlegal.org	Senior Officers: William H. Slattery, Esq. President whslattery@yahoo.com	Martin S. Kaufman, Esq. Senior Vice President and General Counsel mkaufman@yahoo.com	Briscoe R. Smith, Esq. Senior Vice President and Counsel brsmith38@yahoo.com
--	--	---	--

Formed in 1976, Atlantic Legal Foundation is a nonpartisan, nonprofit public interest law firm that advocates the principles of private enterprise and challenges burdensome or illegal government regulations and other intrusive interference with individual rights. The Foundation also works to promote and protect scientific and other authentic expert evidence in the courtroom. ALF is a 501(c)(3) tax-exempt organization and contributions are tax deductible. ALF is supported by individuals, private foundations and corporations based throughout the United States. The Foundation does not accept government funding.