ATLANTIC LEGAL FOUNDATION
2017 ANNUAL REPORT

The Year in Review

2017 was another productive year and the 40th such year for the Atlantic Legal Foundation's advocacy in courts across the country. Atlantic Legal scored significant successes in vigorously pursuing its mission of advancing the rule of law by advocating limited and efficient government, free enterprise, individual liberty, school choice and sound science.

Among its many briefs filed in 2017 before appellate courts and the US Supreme Court have been those addressing compelled speech and science issues, freedom of association, regulation by litigation circumventing the notice and comment procedure of the Administrative Procedure Act, interpretation of the Endangered Species Act which has been abused to impose oppressive government controls over private lands and excessive judicial deference to administrative agencies proliferating an overbearing regulatory state.

The Foundation elevated its status as the nation's preeminent public interest law firm in advocating application of clear and sound rules for the admissibility of expert testimony in toxic tort, product liability and other litigation by filing briefs on behalf of distinguished scientists as well as business and legal associations in asbestos and other cases focusing on the trial judge's "gate-keeping" responsibility in admitting or excluding expert testimony.

Constitutional and important procedural issues were a focus in several briefs in the Supreme Court of the United States. The Court agreed with our position that "jurisdictional determinations" by the U.S. Army Corps of Engineers (and EPA) in enforcing the Clean Water Act are appealable to federal courts. The Court ruled unanimously that property owners can challenge a jurisdictional determination in court without the property owner first having to apply for a permit or risk severe penalties before having their "day in court."

We continued to challenge class-action abuse in the Supreme Court in cases involving certification of massive classes of plaintiffs in antitrust, employment and consumer class actions involving potentially billions of dollars in damages. Class action abuse is important because, as the Supreme Court has recognized, certification of huge classes exposes defendants to enormous potential damages and puts immense pressure on defendants to settle litigations even when they have little merit because the cases become "bet the company" exposures.

The Foundation filed briefs in the Supreme Court and federal appellate courts in cases involving federal preemption of state law in the fields of aviation safety and in the enforcement of contractual arbitration provisions in employment and consumer contracts.

In state courts, the Foundation supported review by the California Supreme Court of erroneous rulings by lower courts on California's standard of proof of causation in asbestos cases.

We continued our work on behalf of charter schools with distribution of our "Leveling the Playing Field" series of guides for charter school leaders. The 3rd edition of Atlantic Legal's guide for charter school leaders in California was printed and distributed in June of 2017 with high praise from the California Charter School Association.

In 2005 Atlantic legal conducted a timely conference in Washington D.C. on a critical concern for American Jurisprudence..."The erosion of the attorney-client privilege." Among others of renown, US Supreme Court Justice Samuel Alito participated along with former US Solicitor General Ted Olson, whose scholarly keynote address at the conference has proven to be prescient. His copyrighted remarks are republished with his permission and with his current embellishments at page 5 in this Report. Also noteworthy is the opinion on "Trump, Cohen and Attorney / Client Privilege" published at A15 in the April 18, 2018 edition of the Wall Street Journal by Atlantic Legal 's 2016 Lifetime Achievement Honoree, Michael B. Mukasey (US Attorney General, 2007- 09 and US District Judge, 1988-2006) in which he admonishes for preservation of the safeguards of the attorney-client privilege.

On February 1, 2018, we were privileged to present the Foundation's Annual Award for 2017... it's 30th annual award ... to Richard J Stephenson, Founder and Chairman of the Board of Cancer Treatment Centers of America® who was introduced by Timothy E. Flanigan, CLO of CTCA® and a Director of Atlantic Legal. Mr. Stephenson's remarks – "Stand-up Nation: Entrepreneurship from America's Founding to Today" – before a capacity attendance of over 220 in the elegant Harvard hall of the Harvard Club in NYC, were enthusiastically received and are published at page 27 in this Report. The Stephenson family treated our audience to a terrific performance over the course of the evening by the famous Three Tenors from Canada who performed a medley of patriotic and classical songs.

As the year 2017 came to a close, we named four new distinguished Directors who were officially elected at our February 2, 2018 Board meeting. Photos and bios of these outstanding professionals who have joined the leadership of our Foundation are presented in this Report for 2017 at page 67.

We are grateful for the long tenures and distinguished services of directors Tom Evans, Doug Foster, George Frazza, Catherine Kilbane and Nicolas Morgan who retired from our board in 2017. Notably Doug Foster served as President of the Foundation from 1985 to 1998 and deserves high praise for his initiatives which continue to contribute to Atlantic Legal's ongoing successes.

Atlantic Legal's Board and Advisory Council remain convinced that our legal system needs the kind of responsible, objective, and vigorous advocacy the Foundation has provided for over 40 years. We are grateful for the loyal support of our contributors, leadership and staff, enabling the Foundation to continue its important work.

Dan Fisk
Chairman & President

Marty Kaufman
Executive Vice President
& General Counsel

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Executive Summary

About Atlantic Legal Foundation

- Atlantic Legal Foundation has been defending liberty for over 40 years, since its establishment in 1977.
- Atlantic Legal Foundation is a nonprofit, nonpartisan public interest law firm with a history of advocating for individual liberty, free enterprise, property rights, limited and efficient government, sound science in the courtroom, and school choice. Atlantic Legal provides legal representation, without fee, to individuals, corporations, trade associations, parents, scientists and educators.
- The Foundation frequently files *amicus curiae* briefs in high-profile court cases in the United States Supreme Court, federal circuit courts and state supreme courts.

Constitutional Issues

Atlantic Legal Foundation participates in important cases involving the expansive and capricious exercise of governmental power, as well as the interplay between U.S. law and international law. Among the issues we have addressed: challenging state and local attempts to regulate interstate and foreign commerce, combatting limits on free speech on college campuses, and opposing expansive assertions of U.S. court jurisdiction over foreign entities and transactions.

Sound Science

Atlantic Legal is the nation's preeminent public interest law firm advocating for the admissibility of sound medical and expert testimony in toxic tort, product liability and other litigation. Atlantic Legal fights the admissibility of "junk" science, and fosters the use of sound science principles in judicial and regulatory proceedings. Our *amicus* briefs on behalf of several Nobel laureates and numerous other prominent scientists were cited and relied on by the majority in the landmark Daubert trilogy of U. S. Supreme Court cases.

Corporate Issues

Atlantic Legal advocates for responsible corporate governance and advocates against intrusive regulation of business. The Foundation was an early proponent of preservation of the attorney-client privilege against compulsory waiver of that essential protection where corporate misconduct has been asserted. It has challenged abuse of class action procedures and has strongly advocated for the enforcement of arbitration agreements.

School Choice

Atlantic Legal's work in this area is focused on supporting charter schools. A major part of this effort is publishing a series of state law guides, written by nationally known labor law attorneys, to educate charter school leaders about what they need to know to deal with efforts by public employee unions to burden charter schools with intrusive union work rules that stifle innovation.

The Foundation also provides legal counsel to and represents charter schools and charter school advocates in court at no cost.

Position Papers and Conferences

Atlantic Legal publishes papers on legal issues of public concern, such as: inadequate judicial compensation and its impact on the New York economy, the need for a restructuring of New York's court system, correcting weaknesses in law school curricula, and the need for and benefits of parental choice in K through 12 education. Of note, we have published a series of state-specific guides for charter school leaders entitled "*Leveling the Playing Field*: What Charter School Leaders Can Do When the Union Calls."

The Foundation sponsors conferences on topics of importance to the business and legal communities, such as: Science and Public Policy Implications of the Health Effects of Electromagnetic Fields; the Attorney-Client Privilege – Erosion, Ethics, Problems and Solutions; Corporate Litigation – How to Reduce Corporate Litigation Costs and Still Win Your Case.

Safeguarding The Attorney/Client Privilege

Current assaults on the attorney/client privilege have captured the attention of the media and the public. Former US Attorney General and the Chief Judge of the U.S. District Court for the Southern District of New York, Michael Mukasey, a 2016 Lifetime Achievement Honoree of the Atlantic Legal Foundation, in a scholarly April 18, 2018 Wallstreet Journal Op.Ed. counseled upholding "... safeguards like the attorney/client privilege." Renowned Harvard Law school professor Alan Dershowitz recently has admonished that the government's intrusion into possible lawyer-client privileged communications cannot reliably be protected by "firewalls and taint teams to preclude privileged information from being used against a client in a criminal case." And he further advised that while such firewalls have been imposed within the context of the Fifth Amendment, an exclusionary rule designed to prevent "material obtained in violation of the privilege" against self-incrimination from being used to incriminate or convict a defendant of a crime, "the fourth and sixth amendments provide far broader protections: they prohibit government officials from in any way intruding on the privacy of lawyer-client confidential rights of citizens." In short, "if the government improperly seizes private or privileged material, the violation has already occurred, even if the government never uses the material from the person from whom it was seized." Under American jurisprudence, the important relationships between lawyer and client, priest and penitent, doctor and patient, and husband and wife are to be encouraged and protected. In the highly publicized case involving privileged files of Michael Cohen, President Trump's personal lawyer, professor Dershowitz in the context of the crime/fraud exception to the attorney-client privilege opines: "... the alleged crimes at issue – highly technical violations of banking and election laws – would not seem to warrant the extreme measure of a highly publicized search and seizure of records that may well include some that are subject to the lawyer-client privilege."

Former US Solicitor General and respected Appellate / U.S. Supreme Court lawyer, Ted Olson, addressed the critical importance of safeguarding the attorney-client privilege in a scholarly and prescient keynote address at a conference held in 2005 by the Atlantic Legal Foundation on "The Erosion of the Attorney/Client Privilege." His copyrighted address merits review and with General Olson's permission is re-published with his updates following for your consideration.

Theodore B. Olson

Theodore B. Olson, who practices at the Washington DC Office of Gibson, Dunn & Crutcher LLP, is one of the nation's premier appellate and US Supreme Court advocates. He has argued 63 cases in the Supreme Court (including Bush v Gore and same-sex marriage cases). His practice encompasses constitutional law, appellate, media, commercial disputes and crisis management. He was the US Solicitor General, 2001-2004; Assistant US Attorney General, Office of Legal Counsel, 1981-1984; private counsel to Presidents Ronald Reagan and George W. Bush; Visiting Scholar, National Constitution Center, 2007; and Council Member, Administrative Conference of the United States. He earned his JD at the University of California - Berkeley, 1965.

LUNCHEON ADDRESS TO ATLANTIC LEGAL FOUNDATION – Theodore B Olson © 2018*

Thank you, Dan, for that very kind introduction. I have found that people in Washington don't usually say nice things about you unless you are dead. Or, as we say in the law, constructively dead. What do you know that I don't?

And thanks as well to the Atlantic Legal Foundation for inviting me to speak here today. It is truly an honor—not only to be speaking before a group of so many esteemed colleagues and friends, including, I hasten to say, true experts who know a great deal more about the attorney-client privilege than I do -- but also to be participating in another fine program of the Atlantic Legal Foundation, an organization that does so much important work in promoting limited government, free enterprise, individual liberty, common sense, and the orderly, rational development of the law. I have been a friend of the Atlantic Legal Foundation for many, many years, and I am pleased to continue that relationship today.

In Hamlet, Shakespeare reminds us that "brevity is the soul of wit." This may explain why so few lawyers are funny. And this, in turn, may explain why in Henry VI, Shakespeare included the now infamous phrase, "The first thing we do, let's kill all the lawyers." But as most of you surely know, Shakespeare put that seemingly outrageous line – outrageous to lawyers at least – in the mouth of a character known as Dick the Butcher—a tagalong minion of the play's antagonist, the anarchist Jack Cade. Cade gained his followers by "pandering to the ignorant," and wanted the lawyers killed as a first step in taking over the country so that the people would "worship me, their lord." We should pay tribute to Shakespeare for observing over 400 years ago that the path to tyrannical control over the people and the end of individual liberty is best commenced with getting the nettlesome lawyers out of the way.

This excellent program today is all about the ability of individuals to receive the advice and protection of counsel, and the attorney-client privilege which is essential to the viability and effectiveness of the attorney-client relationship. And the erosion of that privilege over time. This topic does not lend itself much to wit, but I will at least try to be brief.

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As you have heard, the attorney-client privilege is the oldest of our evidentiary privileges for confidential communications. For nearly as long as English courts have been empowered to compel testimony from witnesses— since the reign of Elizabeth I—the attorney-client privilege has operated as an exception to what was then the entirely novel power of testimonial compulsion. As early as 1580, Elizabethan courts had ruled that "wherein he hath been of Counsel, it is ordered he shall not be compelled by subpoena or otherwise to be examined upon the same."[1] And, by 1654, the King's Bench had ruled that an attorney "is not bound to make answer for things which may disclose his clyent's cause."[2]

The rationale that animates the privilege is certainly familiar to everyone in this room. In Chief Justice Rehnquist's words, it exists "to encourage full and frank communication between attorneys and their clients and thereby [to] promote broader public interests in the observance of law and the

* Mr. Olson thanks Joshua Wesneski, Esq. for his conscientious contribution to updating these remarks from the original 2005 presentation to current conditions in the spring of 2018.

administration of justice."[3] This rationale was expressed as early as 1743, when Baron Mounteney, writing for the Court of the Exchequer, acknowledged that the need for legal advice in a then-increasingly complex colonial economy "introduced with it the necessity of what the law hath very justly established, an inviolable secrecy to be observed by attornies, in order to render it safe for clients to communicate to their attornies all proper instructions for the carrying on of those causes which they found themselves under a necessity of intrusting to their care."[4] The "inviolable secrecy" enables the client to reveal information that could, if disclosed, adversely affect his interests. And the full disclosure of all pertinent information allows the lawyer to provide competent and accurate legal advice to the client. So important is the promise of confidentiality to an effective attorney-client relationship, that in the Vince Foster case, the Supreme Court held that the privilege survives even the death of the client, and applies even where the government's need for the information is compelling.[5] The loss to justice, in shielding relevant evidence from a court's consideration, is outweighed, the Court has held, by the benefits that accrue to justice from the effective assistance of counsel.[6] Regrettably, the attorney/client privilege is today under siege. **Litigants have become quick to challenge assertions of privilege, and courts seem increasingly open to interpretations that limit the vitality of the doctrine, narrowing the concept of who constitutes a "client," what constitutes a "communication," and the circumstances under which such communications are "confidential,"—all while also broadening the circumstances that will constitute a waiver of the privilege and expanding the scope of those waivers.**

Ironically, one of the gravest and most unfortunate threats to the privilege is not narrow judicial interpretation of the privilege, or even aggressive litigation tactics, but rather clients' willingness, under government pressure, to waive the privilege and place their confidential communications with attorneys into public view. And, sensing somehow that they may someday find themselves in a situation where it is advantageous to waive the privilege, clients are increasingly holding back information, inhibiting the ability of their lawyers effectively to represent them.[7]

With your indulgence for a few more minutes, I will share with you some thoughts about these so-called voluntary privilege waivers, particularly in the context of the representation of corporations in internal investigations, and a few thoughts regarding restoring the vitality of the privilege and the effectiveness of the representation of corporate clients in a world where such waivers are increasingly commonplace.

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Over the last few years, we have seen an increasingly familiar scenario play itself out. A publicly traded company discovers some accounting or other irregularities or receives credible information of some internal misconduct by its employees. The company calls in outside counsel, who conduct a confidential internal investigation, interviewing numerous employees to determine the source and extent of the

1. *Dennis v. Codrington*, Cary 143, 21 Eng Rep. 53 (Ch. 1580).
2. *Waldron v. Ward*, Sty. 449, 82 Eng. Rep. 853 (K.B. 1654).
3. *Upjohn Co. v. United States*, 449 U.S. 383, 389 (1980).
4. *Annesley v. Earl of Anglesea*, 17 How. St. Tr. 1129, 1241 (Ex. 1743).
5. *Swidler & Berlin v. United States*, 524 U.S. 399, 410-11 (1997).
6. Id. at 406-08.

misbehavior. That investigation uncovers damaging and perhaps incriminating information. Outside counsel concludes that a handful of employees were guilty of wrongdoing and reports those findings to the company's general counsel and board of directors.[8] The company terminates the guilty employees, tightens its compliance processes, discloses the wrongful activity and braces for civil litigation. The SEC and other state and federal regulators open civil fraud or other civil enforcement investigations, while the Department of Justice opens a criminal investigation and, as a good corporate citizen, the company pledges its complete and unwavering cooperation. The next bit of news is no longer unexpected, but seldom welcome. The Department of Justice or the SEC thank the company for their initial efforts at cooperating in their investigations. More cooperation is needed, however; they request that the company waive attorney-client and work product privileges with regard to the internal investigation conducted by the outside counsel. Such a waiver, of course, is not technically required. But, the SEC and DOJ make the point that the company must disclose all relevant facts in order to receive cooperation credit,[9] regardless of whether the disclosure of those facts implicates the attorney-client privilege, and that the company's cooperation will contribute to the decision whether to pursue indictment and enforcement actions, including, perhaps, debarment from government contracts or employment in the securities industry.

Gritting its collective teeth, the board of directors picks its poison and decides to waive its privileges and disclose the details of the investigation to the investigators.

Now the company is *really* vulnerable to civil litigation. Citing the waiver of the privilege, counsel for the civil plaintiffs demand production of the investigation files.[10] In what is certain to be an agonizing exercise, the company produces the investigation materials, either voluntarily or in response to a court order, giving the civil litigants a road map to an expensive judgment or settlement.

This particular three-act play—internal investigation, followed by waiver of privileges, followed by self-incrimination for the benefit of civil litigants—has played out over and over again in dozens of securities fraud investigations. Columbia/HCA Seaboard, Tyco, McKesson HBOC, Credit Suisse First Boston — the list goes on and on. In each case, the company, in order to cooperate fully with prosecutors and regulators, voluntarily waived the attorney-client and work product privileges with regard to aspects of its internal investigation into employees' misdeeds in the hope of avoiding criminal prosecution and onerous civil enforcement proceedings and penalties. And in each case, those formerly privileged materials made their way into the hands of civil plaintiffs, gratified recipients of the keys to the proverbial vault.

How do these voluntary privilege waivers affect the ability of lawyers to represent clients? And what, if anything, can be done to mitigate the damages? The answer to the first question is obvious. The second, of course, is much more difficult.

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7. See ABA Task Force Hears Suggestions for Shoring Up Corporate Privilege, 73 No. 31 United States Law Week 2494 (Feb. 22, 2005); David B. Fein & Robert S. Huie, Corporate Privilege Under Siege: Government Demands for Wavier Undercut the Purposes of Attorney-Client Privilege, 19 No. 7 Andrews Corp. Off & Directors Liab. Litig. Rep. 16 (Oct. 20, 2003).

8. Such wrongdoing may range from bribery – violations, for example, of the Foreign Corrupt Practices Act, to sexual harassment or discrimination, violations of environmental laws, violations of various securities laws, etc.

9. See Dep't of Justice, U.S. Attorneys' Manual § 9-28.710, available at https://www.justice.gov/usam/united-states-attorneys-manual; Securities and Exchange Commission Division of Enforcement, Enforcement Manual § 4.3 (2017), available at https://www.sec.gov/divisions/enforce/enforcementmanual.pdf.

10. Another possibility, of course, is a Congressional investigation demanding the previously privileged materials.

At the outset, it must be said that, in my view, these privilege waivers are voluntary in name only. The Department of Justice's U.S. Attorneys' Manual [11] does not formally require a waiver of privileges as a prerequisite to leniency in a charging decision. Nor does the SEC, for its part, require privilege waivers as a prerequisite to lighter charges and reduced sanctions.[12] Both agencies profess that the waiver of privileges is not a "prerequisite," but rather insist that corporations must only disclose all relevant facts relating to the investigation.[13] But the message could not be more clear. Cooperation credit is dependent upon the disclosure of all facts regarding the alleged misconduct, regardless of whether those facts were uncovered in an investigation conducted by an outside law firm.

Let us be frank. As Attorney General Robert Jackson stated in 1940, the federal prosecutor "is one of the most powerful peace-time forces known to our country. [He] has more control over life, liberty, and reputation than any other person in America. His discretion is tremendous." "[O]n the basis of his one-sided presentation of facts, [he] can cause [a] citizen to be indicted and held for trial." This is even more true today, and when a corporation is indicted, thousands of innocent employees and tens of thousands of innocent stockholders may suffer immeasurable damage. To paraphrase Marlon Brando, the offer to waive privileges in this context is one that is not easily refused.

One need look only as far as Arthur Andersen—no longer in the auditing business . . . no longer in any business—and WorldCom, which settled its civil enforcement proceedings for an eye-popping $2.25 billion, to realize that a company's decision whether or not to waive the privilege can hardly be characterized as voluntary. Government authorities are essentially telling companies—who, let us not forget, though perhaps criminally liable under principles of vicarious liability, they and their shareholders are, for the most part, the victims of their employees' malfeasance and essentially blameless as an institution -- "You are not required to waive the privilege, but if you don't you may get indicted. And if you get indicted, well, it's curtains. Remember Arthur Andersen?"

Waive or risk corporate death is not, I submit, much in the way of a choice. The message is unmistakable: Raise a white flag or face the potential prospect of capital punishment.

Remember Thomas Hobson, the Cambridge stablekeeper? Anyone who wished to rent a horse was required to rent the nag nearest the stable door. Hence the expression "Hobson's choice," meaning no choice at all. The choice to waive the privilege in the face of a potential corporate criminal prosecution is a Hobson's Choice, for corporations **and** impliedly, for shareholders who have invested in the company.

Now, it is true that the companies who waive the privilege do so to receive a benefit—leniency in the charging decision, and, they hope, a decision not to prosecute the corporate entity. A prosecutor may be interested in making a deal, but only if the defendant tells the authorities everything he knows about the circumstances of the offense. In return for leniency, the prosecutor expects a company to "come clean." Because a corporation can speak only through its employees and agents, and because the wrongdoing employees generally have little personal interest in being interviewed by the authorities as

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11. *See* Dep't of Justice, *U.S. Attorneys' Manual* § 9-28.710, available at https://www.justice.gov/usam/united-states-attorneys-manual.

12. *Enforcement Manual, supra*, § 4.3.

13. *See U.S. Attorneys' Manual, supra,* § 9-28.710*; Enforcement Manual, supra,* § 4.3.

long as they are the targets of the investigation, disclosure of outside counsel's investigation materials is generally the best and most efficient, sometimes the only, way for a company to impart the information the government seeks.

What the defense bar is really complaining about, the prosecutors say, is not the request for a privilege waiver in the abstract, but the laws and regulations that permit criminal prosecutions of corporations. After all, we would never expect prosecutors to tender a plea bargain to an individual defendant who refused to disclose helpful information about his offense. The defendant is expected to waive his constitutional right to remain silent and disclose what he knows.

But, I submit, the individual defendant is not expected to waive his attorney-client privilege. His attorney is not expected to testify and tell the government what his client told him. That, I expect, would be construed by the courts as depriving the defendant of his Sixth Amendment right to counsel, and would render any subsequent plea bargain both coercive and not voluntary.

Should the rule be different for corporations? The government may contend that the real objection here is the prosecution of corporations for the acts of their employees. Perhaps. That issue does, it seems to me, deserve further attention. One might argue that society gained little by the extraction of a plea bargain from David Duncan and prosecution of Arthur Andersen for Duncan's actions under a theory of vicarious liability. But that is, indeed, a subject for another speech.

The quite independent issue, I would say, is whether it is consistent with the concept of the right to counsel and the attorney-client privilege for the government to have the power to impose the "waive-or-risk-death" Hobson's Choice upon a corporate investigation target and use it whenever it suits the prosecutors' interests—which is to say, frequently. Certainly it will never happen that all investigation targets simultaneously refuse to waive their respective privileges, standing shoulder-to-shoulder in defiance of the government's threats of prosecution. Imagine the prosecution for collective, conspiratorial obstruction of justice that that might yield. Besides, stockholders and their fiduciaries would rarely see a sufficient benefit to justify the risk as the price for failure to waive. So, faced with that threat, companies do as they must and waive the privilege, disclosing to the authorities the products of counsel's investigation into their employees' misdeeds.

As I indicated earlier, and as we all now know, the consequences of that disclosure to the government tend to reverberate far beyond the context of the government's investigation.

First, the great majority of courts have rejected the doctrine of a "selective" or "limited" waiver, that is, a waiver of a privilege that applies to certain parties, but not to others.[15] For those that waive the privilege, the government is typically only the first in a long line of predators who will seek the formerly confidential information. Second, even worse, most courts have held that waiver of the privilege with respect to certain documents waives the privilege with respect to all communications on the same subject matter.[16] Federal Rule of Evidence 502, enacted in 2008, provides that the intentional disclosure of attorney-client privileged communications to a federal agency waives the privilege with respect to undisclosed communications concerning the same subject matter, so long as the communications "ought in fairness to be considered together."[17] Civil litigants can thus leverage a company's privilege waiver with regard to certain communications into a point of entry to other undisclosed attorney-client communications, with the degree of success largely dependent on the level

of specificity a particular magistrate applies to the term "subject matter." The consequences of a privilege waiver can be grave indeed.

This threat that privileged communications will be disclosed to government authorities and thereafter expanded in scope and volume and widely disseminated—a threat that now looms over virtually all corporate investigations—not surprisingly, has a very corrosive impact on the full and frank communication essential to an effective attorney-client relationship.

A corporation, of course, can speak only through its officers, agents, and employees. Full and frank communication with a corporate client thus necessarily means free communication with the client's officers and employees. The newfound prevalence of privilege waivers, however, effectively deputizes the company's in-house and outside counsel as agents for prosecutors and regulators, and this makes many employees understandably reluctant to talk to an internal investigator. Cognizant of the fact that the findings of the company's internal investigations are increasingly likely to make their way into the hands of the government, employees quite naturally have started viewing the company's investigators with the same level of suspicion and apprehension that they hold toward government agents investigating a crime. To be sure, many, if not most, employees will fully cooperate with an internal investigation—just as they would cooperate with a government investigation—but just as surely, some employees, often those with the most information to share, will not be so forthcoming—some simply not wanting to get involved in a potential criminal prosecution, others fearing that they themselves could end up being prosecuted.

The practice of privilege waivers thus has a significant, I submit, deleterious effect on corporate compliance programs, the ability of companies to self-regulate, and most ironically, their ability effectively to cooperate with the government.

But, this horse may be so far out of the barn that coming up with a solution may be very difficult if not impossible. It has been common practice for more than a decade now for an attorney conducting internal investigations to advise an interview subject that he represents the company and not the interviewee, and that the company, in its sole discretion, may elect to waive the privilege and disclose the findings of the investigation to law enforcement. Faced with such an admonition, wrongdoers within a corporation generally are not particularly forthcoming once the questions start—regardless of whether it is in-house counsel, outside counsel, or government agents asking the questions.

Perhaps more amenable to a solution is the significantly pernicious consequences arising from the refusal of courts to recognize "selective waivers." As I mentioned, the prevailing interpretation of the doctrine of waiver, makes it difficult for a litigant to waive a privilege only as to particular parties. In the context of corporate internal investigations, this results in the near-certainty that any communications disclosed to government authorities will eventually find their way into the hands of civil plaintiffs – or, by the way, Congressional investigators. And, as if that were not bad enough, in most jurisdictions, a

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15. *See, e.g., In re Pac. Pictures Corp.,* 679 F.3d 1121, 1129 (9th Cir. 2012); *In re Qwest Commc'ns Int'l Inc.,* 450 F.3d 1179, 1192 (10th Cir. 2006); *In re Columbia/HCA Healthcare Corp. Billing Practices Litigation,* 293 F.3d 289 302-04 (6th Cir. 2002).

16. *See, e.g., United States v. Skeddle, 989 F. Supp.* 917, 918-19 (N.D. Ohio 1997)*; see generally* 8 Wigmore, Evidence § 2328, at 638 (McNaughton rev. 1961).

17. Fed. R. Evid. 502(a).

waiver of privilege with respect to certain documents waives the privilege for all communications concerning the same subject matter.

Far beyond the fact that such disclosures may eventually have a major impact on a company's bottom line or share price, there can be no doubt that disclosure of internal investigations to the plaintiffs' bar chills attorney-client communications—just as if the plaintiffs' counsel were peering over the lawyer's shoulder as the client was describing his predicament, or as the lawyer was advising his client.

As I have suggested, this chilling effect takes at least two forms: First it can constrain the client's ability or willingness to describe his legal problem and its predicate facts. If the client has reason to believe that his communication with his attorney will eventually be disclosed to his adversary, the client—at a minimum—will be tempted to shade the facts in a light that be believes (perhaps erroneously) to be more favorable to his defenses in civil litigation. Or worse, the client could withhold outright those facts that weaken his legal position. Indeed, the incentives are in place for the company to refrain from conducting an independent investigation altogether. Why do it if it will do more harm than good?

Second, knowledge that attorney-client communications will wind up in the hands of civil adversaries, especially class action opponents, or Congressional investigators may hamstring the lawyer in his ability to render legal advice to the client. Rather than provide frank, accurate and precise advice, a lawyer who is unable to maintain the confidentiality of his client communications will be tempted to offer advice in the form of generalities and hypotheticals. Even worse, the attorney might offer, consciously or not, self-protective advice. If his communications are going to be disclosed, the lawyer may want to make himself look good. More and more, regulators, prosecutors, and the plaintiffs' bar are going after counsel. We read about it practically every day in the Wall Street Journal. It is, absurd to pretend that this development does not affect the quality of the lawyer's advice.

All this, of course, does a tremendous disservice to a corporate client that badly needs timely, uninhibited and comprehensive legal advice. As the Supreme Court recognized in its landmark Upjohn case nearly a quarter century ago, compliance with "the vast and complicated array of regulatory legislation confronting the modern corporation" is "hardly an instinctive matter."[18] And such compliance has certainly not become any more intuitive in the years since Upjohn.

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So what can lawyers do? How can lawyers restore full and frank communications between lawyers and corporate clients exposed to charges of wrongdoing?

Obviously, a swift retreat by the regulatory and prosecutorial authorities from the increasingly routine practice of obtaining waivers of privilege in the course of an investigation would go a great distance toward curing the problem. To speak the language of Dan Rather, however, in the present political environment, that is about as likely as a bullfrog getting a kiss from a princess. The corporate bogeymen of Enron and WorldCom remain fresh in our minds, and the media remains enchanted with the specter of toppled executives—the Ebbers and Scrushys, Stewarts and Skillings -- being paraded in handcuffs to their first mug shots. Prosecutors are not likely to lay down this delicious tactic.

So, perhaps the more pertinent inquiry is: In a world where privilege waivers are in vogue, how can the

18. *Upjohn Co. v. United States*, 449 U.S. 383, 392 (1981).

privileges be protected and free communication between attorney and client be preserved?

One very helpful solution would be if Congress were to pass a statute permitting the so-called "selective waivers" that most courts have found to be outside the bounds of the common law rules for the privilege. A selective waiver statute would permit a corporation to disclose privileged information to government investigators without globally waiving the privilege with regard to that information. In many respects, a selective waiver statute would offer the best of both worlds: It would allow the authorities to call upon corporations to become full partners in their efforts to enforce applicable laws and regulations, while permitting the corporation and its attorneys to communicate freely without fear that they will be compelled to disclose those communications to civil adversaries. Such a statutory solution would also have the laudable benefit of bringing an end to the state-by-state, district-by-district uncertainty concerning the scope and extent of privilege waivers. Lawyers and corporations should endeavor to convince the government to support some version of such legislation.[19]

Congress unquestionably has the power to pass a selective waiver statute. In 2008, Congress enacted new Federal Rule of Evidence 502, which discusses the effects of waiving attorney-client privilege and work product to a federal office or agency, including in state proceedings.[20] The new rule, however, does not discuss the issue of selective waiver, but it is clearly within Congress's authority to amend the rule to provide for selective waivers where appropriate.

In the absence of such a statute, attorneys should do everything they can to minimize the frequency of waivers, and where they are unavoidable, take every available precaution to limit their scope. As a first step, a corporation under investigation should work with the government investigators to maximize the corporation's cooperation without vitiating either the attorney-client and work product privileges. Hold the Department of Justice to its word, when it states that cooperation credit "is not predicated upon the waiver of attorney-client privilege or work product protection."[21]

But if the government investigators are insistent about the need for privileged information—and experience dictates that they often are—the corporation should try to fill the investigator's needs solely with factual attorney work product, and withhold those communications that reveal attorney mental impressions or legal advice. The U.S. Attorneys' Manual now makes clear that it is disclosure of all relevant facts, not the so-called "core" attorney-client communications or work product, that prosecutors should seek.[22] In the inevitable civil litigation that follows, this could enable a corporation to confine its privilege waiver to certain attorney work product and preserve the sanctity of attorney-client communications offering legal opinions and advice. But for this to be successful, the attorneys conducting the internal investigation must scrupulously segregate the factual information they gather from the legal

19. Officials from the Department of Justice have expressed, at least, some openness to this idea. *See* Mary Beth Buchanan, *Effective Cooperation by Business Organizations and the Impact of Privilege Waivers,* 39 Wake Forest L. Rev. 587, 606-07 (Fall 2004). (noting that "[t]o the extent the corporation is cooperating with the government, and may have regulatory disclosure obligations, the interests of the corporation, its non-management investors, and the government are largely aligned"). The SEC has also endorsed selective waiver legislation. *See* Stephen M. Cutler, Director, Davison of Enforcement, U.S. Securities & Exchange Commission, Testimony Concerning the Securities Fraud Deterrence and Investor Restitution Act before the House Subcommittee on Capital Markets, Insurance, and Government Sponsored Enterprises, Committee on Financial Services, June 5, 2003 (available at <http://www.sec.govinews/testimony/060503tssmc.htm>).

20. *See* Fed. R. Evid. 502

21. *U.S. Attorneys' Manual, supra*, § 9-28.720.

advice or opinion work product that they provide to the client, and additionally take care that the factual information does not itself reveal an attorney's mental impressions—for instance, as a witness interview report might if it were to include the attorney's questions.

Next, any disclosure of privileged material to government investigators, whether or not limited to factual attorney work product, should be accompanied by a written confidentiality agreement between the corporation and the investigating agencies. While most courts have found such agreements to be ineffective to stave off a finding that the privilege has been waived, this aspect of attorney-client privilege, at least in federal courts, remains a creature of the common law. As such, attorneys should continue to present courts with the opportunity to adapt the doctrine to the times and advocate for the recognition of selective waivers.

Finally, while I haven't thought the matter through and haven't done the research, it seems like it would be worthwhile delving more deeply into the Sixth Amendment implications of promiscuous and implicitly coercive insistence on waivers under the threat of prosecution. As I said before, I cannot envision that courts would long tolerate routine demands by prosecutors for attorney-client privilege waivers in plea bargaining with individual defendants. That would strip the defendant of his Sixth Amendment right to counsel, and undermine the enforceability of the resulting plea bargain. The justification for using that tactic against corporations, where it would be impermissible in dealing with individuals, is by no means unassailable.

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In 1888, Justice Field summed up the rationale for the attorney- client privilege as follows: "The rule which places the seal of secrecy upon communications between client and attorney is founded upon the necessity, in the interest and administration of justice, of the aid of persons having knowledge of the law and skilled in its practice, which assistance can only be safely and readily availed when free from the consequences or the apprehension of disclosure." [23] In an era when the power of the state can—for all practical purposes—compel a corporation to break this "seal of secrecy," it is incumbent upon attorneys to strive toward some accommodation that will relieve clients of those "consequences of disclosure," so that they may again effectively provide counsel to the noble end of justice.

22. *Id.* § 9-28.710.

23. *Hunt v. Blackburn*, 128 U.S. 464, 470 (1888).

In The Courts

South Carolina Supreme Court Chamber.

The mission of the Atlantic Legal Foundation is to advance the rule of law by advocating limited and efficient government, free enterprise, individual liberty, school choice, and sound science in legal and regulatory proceedings. Atlantic Legal challenges the abuse of power by the government or the misuse of the legal system by private parties to deny fundamental rights and liberties.

Atlantic Legal is a nonprofit, nonpartisan public interest law firm with a demonstrable history of fighting for the integrity of the judicial process by ensuring that courts apply sound legal and scientific principles. Atlantic Legal provides legal representation without fee, to individuals, corporations, trade associations, parents, scientists, educators and other groups. The Foundation also educates the public and various professional groups through the publication of handbooks and reports and by organizing or presenting at conferences on legal matters.

Some of the principal areas on which we focus are federal constitutional issues including individual liberty interests, separation of powers, federal preemption, free speech and association. We strenuously oppose the expansive and capricious exercise of governmental power. Atlantic Legal regularly participates in cases involving issues affecting the market economy. We have been leaders in advocating for educational choice, in which we have focused on supporting charter schools by providing legal counsel to and representing charter schools and charter school advocates in court at no cost, often where teachers unions seek to derail the certification of the charter school. Each year we typically file 10 or more *amicus curiae* briefs in the U.S. Supreme Court (at both the petition and merits stages), in federal courts of appeal, and in the highest courts of several states.

We are the nation's preeminent public interest law firm advocating for the use of sound science in adjudication and regulation, notably in numerous cases in the U.S. Supreme Court and the highest courts of many states in which the issue of the law of admissibility of medical and other scientific expert testimony in toxic tort, product liability and other cases has been decided. In these cases we regularly represent prominent scientists who endeavor to educate the court about underlying scientific principles. Our *amicus* briefs on behalf of almost two dozen Nobel laureates and numerous other prominent scientists have been cited and relied on by the majority in the landmark *Daubert* trilogy of U. S. Supreme Court cases and the California Supreme Court. Atlantic Legal also publishes papers on legal issues of public concern, including inadequate judicial compensation and its impact on the economy; correcting weaknesses in law school curricula; and the need for and benefits of parental choice in K through 12 education. The Foundation sponsors conferences on topics of importance to the business and legal communities, including Science and Public Policy Implications of the Health Effects of Electromagnetic Fields; the Attorney-Client Privilege – Erosion, Ethics, Problems and Solutions and Corporate Litigation – How to Reduce Litigation Costs.

Constitutional Law - First Amendment - "Agency Fees" and Freedom of Association and Speech. Whether government employees can be forced to pay union "agency fees" which are used, in part, to fund labor union advocacy for policies with which many government workers disagree. In the U.S. Supreme Court on the merits.

Janus v. AFSCME, No. 16-1466 and ***Hill v. SEIU,*** No. 16-1480 - U.S. Supreme Court.

These are two related cases, both brought by the National Right to Work Legal Foundation, challenging aspects of the relationship between the State of Illinois and home care providers and child care providers and public employee unions designated by the State as exclusive representatives of home care providers and child care providers in their dealings with the State and the collection of fees by the public employee unions.

These are issues which the Court has addressed and we have addressed in amicus briefs over the last few years and in *Knox v. SEIU, Local 1000*, 567 U.S. 298 (2012) and *Harris v. Quinn*, 134S. Ct. 2618 (2014), and which we hoped the Court would resolve in *Friedrichs v. California Teachers' Association*, 136 S. Ct. 1083 (2016), in which certiorari was granted, the case was fully briefed and argued, but the judgment of the U.S. Court of Appeals for the Ninth Circuit ruling for the union was affirmed exactly one year ago by an equally divided Court, Justice Scalia having died after oral argument, but before a decision on the merits.

Janus presents the same question presented in *Friedrichs*: should *Abood* be overruled and public-sector agency fee arrangements declared unconstitutional under the First Amendment?

This case was argued in February 2018, and a decision is expected before the Court adjourns in June 2018.

Compelled speech – ***CTIA v. City of Berkeley***, No. 17-976, U. S. Supreme Court, on petition for certiorari. The question in this case is whether cell phone stores can be required to post signs warning customers of the "dangers" of cell phones.

We filed an *amicus* brief on behalf of the National Association of Manufacturers in support of the petition for review by CTIA, the trade association of the cell phone industry. The primary legal issue is whether under the First Amendment a local government can compel private persons to speak words that convey thoughts the speaker does not believe or agree with. This is especially the case when the speech involves controversial or – as in this case – untrue facts (the Federal Communications Commission and a consensus of relevant scientific organizations has found that cell phones do not emit dangerous levels of ionizing radiation). This case involves both free speech issues and sound science issues.

We expect a decision on CTIA's petition before the Court recesses in June.

Arbitration of disputes. Enforceability of Arbitration Clauses – Employment Contracts – National Labor Relations Act

Epic Systems Corp. v. Lewis*,** No. 15-2997, ***Ernst & Young v. Morris, No. 16-300, ***NLRB v. Murphy Oil***, No. 16-307. U.S. Supreme Court on the merits.

In January 2017, the Supreme Court granted certiorari review in three cases to resolve a circuit split arising from contrary conclusions drawn recently by several circuits on whether class and collective action waivers in arbitration clauses of employment agreements violate the National Labor Relations Act or whether the Federal Arbitration Act trumps the NLRA. Class-action waivers in employment agreements have been struck down by the Ninth and Seventh Circuits, but upheld by the Second, Fifth and Eighth Circuits.

We filed an amicus brief, in which we argued that the Supreme Court has long held that the Federal Arbitration Act establishes a Congressional policy strongly favoring arbitration, and that overcoming that strong presumption requires a clear legislative statement that some other identified Congressional policy overrides the Arbitration Act. Further, the Court has consistently recognized that arbitration is a matter of contract and that courts must rigorously enforce arbitration agreements according to their terms and the obligation to "rigorously enforce" arbitration agreements includes terms requiring the parties to arbitrate disputes individually, rather than on a class or collective basis.

The cases were argued together in the very first session of the Court's October 2017 term. They were decided in May 2018.

The U.S. Supreme Court ruled on May 21, 2018, in a 5 - 4 decision, that employment agreements requiring employees to waive their rights to pursue class action claims are enforceable, rejecting the National Labor Relations Board's ruling that class waivers violate federal labor law. Justice Neil Gorsuch, joined by Chief Justice John Robert sand Justices Anthony Kennedy, Clarence Thomas and Samuel Alito, held that mandatory arbitration agreements must be enforced according to their terms under the Federal Arbitration Act, even if those terms mandate individual arbitration and prohibit collective litigation

or collective arbitration. The Supreme Court ruled that employers can force workers to sign such waivers as a condition of employment.

The 5 - 4 decision, breaking along the Court's conservative-liberal divide, mirrored the broader debate in the weight each faction gave to conflicting federal statutes and the congressional priorities they reflected. Business groups have championed individualized arbitration as an efficient means to resolve disputes and deter frivolous claims that take longer and cost more to resolve if brought in court as a class action. Consumer and labor organizations contend the private, often confidential, arbitration system is stacked against individuals and can hide from public scrutiny systemic misconduct by a company or industry.

Regulation by Litigation

Robles v. Domino's Pizza, No. 17-55504, U.S. Court of Appeals, Ninth Circuit. The issue in this case is whether it is permissible for the Department of Justice to effectively impose a regulatory scheme without undertaking the "notice and comment" procedure of the Administrative Procedure Act, but instead through "expressions of interest" advancing its interpretation of a statute in the context of private litigation – in a manner that does not give regulated entities the procedural protections of the APA and judicial review. In the U.S. Court of Appeals for the Ninth Circuit.

The Foundation's brief, filed in late December 2017, focuses on two principal issues: (1) the lack of judicial deference afforded to regulatory agencies that attempt to short-circuit the notice and comment protections of the Administrative Procedures Act ("APA") with respect to regulatory law making; and (2) the uncertainty and costs that arise when competing judicial directives are issued because federal agencies have abdicated their duty to promulgate regulations pursuant to the APA.

We argue that the U.S. Department of Justice ("DOJ"), the agency delegated by Congress to effectuate the Americans with Disabilities Act ("ADA"), has not properly promulgated website accessibility regulations. DOJ is required to undergo the rule making process set forth in the Administrative Procedures Act, 5 U.S.C. §553 (2017) ("APA") in order to issue regulations under the ADA. DOJ, however, has instead opted to advance non-governmental guidance through litigation – often third-party litigation brought by private parties and their private counsel – with the expectation that the judiciary will defer to its position. The Foundation and its members have a significant interest in ensuring that regulations are properly enacted and that citizens have fair notice of what is required of them.

The Court's decision in this proceeding will not only impact every business within its jurisdiction that has a website, but, more broadly, it will influence how federal agencies regulate conduct. The Foundation and its directors and advisors have a significant interest in ensuring that regulations are properly adopted and that affected persons have an opportunity to participate in the regulatory process and have fair notice of what is required of them.

Admissibility of Expert Testimony

DeLisle v. Crane Co., Florida Supreme Court, No. SC16-2182, is an asbestos personal injury case that was tried to verdict against Crane Co., a maker of (among other things) gaskets used in industrial

pumps and R.J. Reynolds Tobacco Company, a cigarette manufacturer. The trial resulted in an $8 million verdict for plaintiff, with 16% of the fault allocated to Crane Co., 44% to R.J. Reynolds, and the remaining 40% to two other defendants.

Crane Co. appealed the verdict, challenging the admissibility and legal sufficiency of the "every exposure" causation testimony presented by plaintiff's expert medical witness. The Florida District Court of Appeal vacated the judgment and ordered entry of a directed verdict for Crane Co., finding that plaintiff's expert testimony was inadmissible under the Daubert standard for admissibility, which the Florida Legislature adopted in 2013 through an amendment to the Florida Evidence Code. R.J. Reynolds appealed on a similar ground (challenging the admissibility of the testimony of several other plaintiff's experts), and the District Court of Appeal, again applying Daubert, reversed the judgment and ordered a new trial for R.J. Reynolds.

The first issue on appeal is whether the District Court of Appeal properly applied Daubert, or whether, as it that should have applied the (less stringent) Frye-like standards for admissibility of expert testimony that applied in Florida prior to 2013. Plaintiff argues that the legislative adoption of Daubert violated the principle of separation of powers inherent in Article V, Section 2(a) of the Florida Constitution,which commits to the Supreme Court the power to "adopt rules for the practice and procedure in all courts." The Florida Supreme Court declined to adopt the section of the Evidence Code amended in 2013 to include the Daubert standard in the context of a rule-adoption proceeding. The Florida Supreme Court stated that it would not consider the constitutionality of that enactment in the context of a proceeding to consider new evidentiary rules, but expressed "concerns" regarding the constitutionality of the Legislature's action that it could only resolve in the context of a pending adversarial appeal. See Crane Co. v. DeLisle, 206 So.3d 94 (Fla. Dist. Ct. App. 2016).

The substantive issue in the case is whether the "cumulative exposure" theory of causation – advanced by plaintiffs as a substitute for their generally discredited "single fiber" theory – is a scientifically and legally credible theory of causation that will support a finding of liability. In DeLisle, plaintiff's expert's testimony that there is "no known safe level" of asbestos is problematic and the trial court properly excluded the testimony of plaintiff's causation expert because that testimony was not based on accepted scientific methodology and was not reliable because the expert's theory is inconsistent with generally accepted scientific principles: (i) plaintiff's causation expert ignored the need to establish both general causation and specific causation, (ii) the epidemiology studies supporting general causation for the type of asbestos used in Crane Co.'s products are not consistent and in some studies no excess occurrence of mesothelioma is reported, while for other commercially used types of asbestos the epidemiology studies consistently report a significant occurrence of mesothelioma; (iii) the expert had no evidence of the intensity, frequency or duration of Mr. DeLisle's exposure and thus could not establish specific causation; (iv) the expert failed to consider exposure to, and carcinogenicity of different asbestos types; and (v) differential diagnosis, the method the expert used to conclude that Mr. DeLisle's disease was caused by exposure to asbestos in Crane's products, while a proper method for diagnosing disease and planning treatment, is not the proper method for determining causation.

The evidence of general causation which for chrysotile is rather limited. The epidemiology data are not consistent and in some studies no excess of mesothelioma cases are reported while for the commercial amphiboles, the epidemiology studies are consistent.

Due Process – Long Arm Jurisdiction

Bristol-Myers Squibb Co. v. Superior Court of California, No. 16-466 U.S. Supreme Court – merits. Due Process – State Court Jurisdiction Over Non-Resident Corporations.

In early March 2017 03-08-2017), we (joined by the International Association of Defense Counsel) filed an *amicus* brief supporting Bristol-Myers Squibb in an appeal on the merits in this case, which is **seen by most Supreme Court practitioners as the most important business case of this term.**

In June 2017, the Court held that California courts lack jurisdiction to hear product liability claims against the manufacturer of the blood-thinning drug Plavix® by plaintiffs allegedly harmed by the drug who are not residents of that state. The United States Supreme Court reversed a decision of California's highest court that would have allowed claims against the drugmaker by hundreds of non-Californians to proceed in a single lawsuit. In an 8-1 opinion written by Justice Alito, the Court dismissed California's "sliding scale" approach to specific jurisdiction, finding that the bare fact that the drug maker had contracted with a California distributor was not enough to establish personal jurisdiction in the state. Justice Sotomayor, the lone dissenter, expressed fears that the majority's decision will make it impossible to bring a nationwide mass action in state court against defendants who are "at home" in different states, resulting in piecemeal litigation and the bifurcation of claims.

More than 600 plaintiffs – the majority of whom were not California residents – filed suit in California state court against Bristol-Myers Squibb, asserting state-law claims based on injuries allegedly caused by the prescription anti-clotting drug Plavix. The drug maker did not develop Plavix in California, did not create a marketing strategy for the drug in that state, and did not manufacture, label, package, or work on the regulatory approval of the product there (the company had engaged in all of those activities in either New York or New Jersey). However, Bristol-Myers sells Plavix in California, and had more than $900 million in sales of the drug between 2006 and 2012.

Bristol-Myers appealed a California Supreme Court decision that allowed almost 600 out-of-state residents to sue the drugmaker over alleged injuries from blood-thinner Plavix because of the company's ties to California. The California court's ruling makes it easier for nonresidents to join in mass class action lawsuits in California. Bristol-Myers argued (i) the California Supreme Court's ruling conflated "general jurisdiction" and "specific jurisdiction," (ii) it was conceded that Bristol-Myers was not subject to general jurisdiction in California, and (iii) as to the overwhelming majority of the 600 plus plaintiffs, there were insufficient contacts between the alleged tortious conduct and California to be the basis of specific jurisdiction.

In the 4-3 decision the California Supreme Court had held that Bristol-Myers could be sued in the California courts on respondents' product-defect claims relating to a drug that was not manufactured or designed in California, even though the defendant is not incorporated in California and is not headquartered there, and whose marketing, packaging, and regulatory materials were not prepared in California, and when the drug at issue was not prescribed to, dispensed to, or ingested by, the respondents in California. The California state court held that the company's extensive contacts with California – such as its marketing and distribution of the drug to California residents, as well as maintenance of research and development facilities located there, (but which played no part in developing the drug at issue), and Bristol-Myers's substantial revenue from all of its activities in

California, gave the state courts "specific" personal jurisdiction over the nonresidents' claims.

The California Supreme Court upheld the lower court's ruling that although the company's business contacts in the state were not sufficient to invoke general jurisdiction, which enables a court to exercise jurisdiction over a defendant no matter the subject of the litigation, state court's have specific personal jurisdiction over the company in light of the nature of the action and the company's activities in California.

In our brief we argued that the California courts' exercise of jurisdiction over claims by non-resident plaintiffs against a non-resident defendant violated the defendant's due process rights. As we argued, the majority of the California Supreme Court utilized a "hybrid" kind of jurisdiction that fits neither category and is amorphous, unpredictable, and too uncertain to meet due process requirements. It was based on a mix of the company's ties to California (such as maintaining research facilities in the state), but which had no, or only tenuous, connection to the transactions which gave rise to the claims in the lawsuit.

The Due Process Clause permits a state court to exercise specific jurisdiction over a defendant only when the plaintiff's claims "arise out of or relate to" the defendant's forum activities. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985) (citation omitted). A state's exercise of jurisdiction comports with federal due process if the nonresident defendant has "minimum contacts" with the state and the exercise of jurisdiction "does not offend 'traditional notions of fair play and substantial justice.'" *Walden v. Fiore*, 134 S. Ct. 1115, 1121 (2014) (quoting *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)).

Due process requirements are satisfied when *in personam* jurisdiction is asserted over a nonresident corporate defendant that has certain minimum contacts with the forum such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice. The "minimum contacts" calculus focuses on the relationship among the defendant, the forum, and the litigation, and requires determining that the defendant purposefully availed itself of the forum.

When a State exercises personal jurisdiction over a defendant in a suit in which plaintiff's claims arise out of or relate to the defendant's contacts with the forum State, the State is exercising "specific jurisdiction" over the defendant. The Court's specific jurisdiction jurisprudence teaches that the existence or absence of a causal link between defendant's contacts with the State and plaintiff's claimed injury is essential in determining whether jurisdiction exists.

The California Supreme Court's analysis and holding on specific jurisdiction are fatally flawed. That court ignored the consistent teaching of the Supreme Court on the nature of contacts that can underpin the assertion of specific jurisdiction. The California court identified nothing Bristol-Myers did in the State that gave rise to the claims in their cases. To establish specific jurisdiction, a plaintiff must identify acts connecting the defendant's actions *in California* with the plaintiff's claims. The California Supreme Court had found that specific jurisdiction was present without identifying any adequate link between the state and the nonresidents' claims. The mere fact that other plaintiffs were prescribed, obtained, and ingested that prescription medication in California, and allegedly sustained the same injuries as did the nonresidents, did not allow the state to assert specific jurisdiction over the nonresidents' claims.

We argued that the California decision confuses principles of general jurisdiction (which it conceded were not satisfied) with "specific jurisdiction" to adjudicate a particular case. *General* jurisdiction exists based on "contacts [with] no apparent relationship to the [injury] that gave rise to the suit," and

then only when they are sufficiently "continuous and systematic" to render the defendant "at home." *Daimler AG* v. *Bauman*, 134 S. Ct. 746, 757 (2014).

The California Supreme Court's "sliding scale" approach is really a loose and spurious form of general jurisdiction and under which the strength of the requisite connection between the forum and the specific claims at issue is relaxed if the defendant has extensive forum contacts that are unrelated to those claims. That approach cannot be squared with the Court's general jurisdiction and specific jurisdiction precedents.

The Bristol-Myers case involves what is viewed as a key business issue. "The big one." "A major victory." "A game changer" is how many defense lawyers describe the landmark Bristol-Myers Squibb decision.

The consequences of the majority's decision could be substantial. The upshot of the majority's opinion is that plaintiffs cannot join their claims together and sue a defendant in a state in which only some of them have been injured.

Many attorneys predict that *Bristol-Myers* will be raised as a jurisdictional defense in class actions, which, unlike mass actions, are brought by representative plaintiffs on behalf of unnamed class members. The Supreme Court said: "The mere fact that other plaintiffs were prescribed, obtained and ingested Plavix in California does not allow the state to assert specific jurisdiction over the nonresidents' claims." If a defendant can seek to dismiss some claims by people in the class if they were brought individually on the ground of lack of specific jurisdiction, the fact they are combined in a class action may not prevent a defendant from seeking to exclude them from the class. It is an issue that may be litigated heavily. The immediate impact is likely to be that mass actions must be filed in the state where the defendant is headquartered or incorporated. That's often Delaware, New Jersey or New York for pharmaceuticals and medical devices, which make up the majority of "mass actions."

The court also left open whether its holding could apply to federal courts, where mass actions usually take the form of multi district litigation. In those cases, a federal judicial panel transfers similar individual cases to a single judge who often is in another state from where the plaintiff brought claims.

Sound Science

The Foundation is currently working on additional cases in this arena. One, in New York State's highest court, involves the "cumulative exposure" theory of asbestos disease causation. The special court supervising the hundreds of New York City asbestos cases pending in New York City, had earned a reputation as a plaintiff-leaning "asbestos liability hell-hole." But in this case the trial court and the intermediate appellate court rendered excellent decisions that correctly applied relevant scientific principles and legal reasoning. New York is an extremely important venue because it is a populous state that is the nation's commercial and financial center and decisions of its high court often influence courts of other states. We hope our amicus brief, which we expect will be filed on behalf of several scientists prominent in relevant fields of science, will help bolster the decisions of the lower courts in this case.

Charter School Advocacy

In advocating for educational choice, Atlantic Legal focuses primarily on supporting charter schools, an effective alternative to failing district schools. A major part of this effort has been the publication of a series of state-specific law guides "*Leveling the Playing Field*," written by nationally known labor law attorneys, to educate charter school leaders about what they need to know to deal with efforts by public employee unions to curb charter schools by unionizing charter school teaching staff and burdening charter schools with intrusive union work rules that stifle innovation.

In the past years, we have provided counsel to various charter schools from the east to the west coasts concerning critical charter grants and renewals often in the face of opposition, as reported extensively in Atlantic Legal's 2016 Annual Report. Charter schools assisted by Atlantic Legal rank in the highest percentiles in reading aptitude, math and other skills among schools throughout the world.

Leveling the Playing Field - New California Edition

California's charter movement has been a leader in energizing public education with a robust infusion of innovative schools. Now more than 1,200 strong, serving over 600,000 students statewide, California's charter schools represent a diversity of instructional programs and operational design as unique as the communities they serve.

As the movement has evolved from a handful of schools focused on improving and increasing innovation, to a broad-based movement focused on high quality outcomes, increasing attention has been focused on examining the diversity of operational structures, and how to enhance the vital role of teachers.

One element of school operations and structures that has been hotly debated is the role of collective bargaining in the charter structure. The operational flexibility that charters enjoy has typically led charter leaders to try to remain unencumbered by the collective bargaining agreements that constrain district schools, although some charters choose to integrate collective bargaining in their design.

Efforts to organize charter school teachers and other employees are likely to have a significant impact on the flexibility the school needs to meet its charter responsibilities, and charter administrators need to know how to react when the union seeks to represent employees. Charter boards and administrators are well advised to seek counsel from firms that practice regularly in this area.

Whatever choices charter communities make to best serve their students, we believe that those choices must be made with the benefit of full information, transparent communication, and clarity about the roles and responsibilities of charter boards, leaders, teachers, and all others engaged in each charter's community.

The Foundation's *Leveling the Playing Field* monographs are designed to answer important questions about the unionization process, what charter leaders must do to foster positive labor relations, and where and how to seek help to improve operational quality.

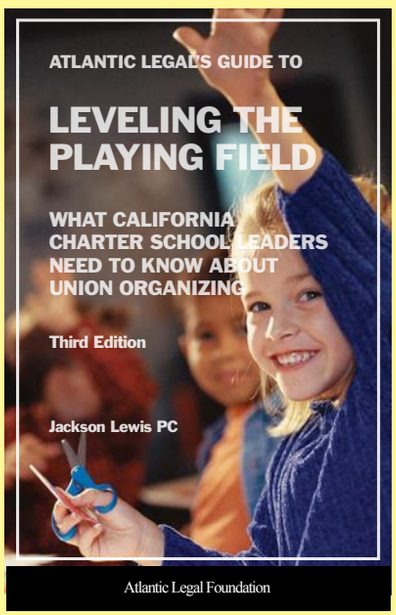
New editions of state-specific versions of *Leveling the Playing Field*, starting with California (released in June of 2017), are prompted by significant developments in labor law as applied to charters. Beginning in 2012, and continuing to now, the National Labor Relations Board has taken jurisdiction over individual charter schools in several states. Since 2012, the NLRB or its regional offices have asserted jurisdiction over charter schools, despite state or local law, at schools in Illinois, Pennsylvania, New York, Michigan, Louisiana, Minnesota, Ohio, Texas and California. In one notable California decision, the NLRB denied a request for review and thus upheld a 2015 regional decision asserting NLRB jurisdiction over a California charter school which was duly organized under the California Charter Schools Act; the NLRB processed the Union's NLRB representation petition over the School's objections.

The trend is toward NLRB jurisdiction over charter school union organizing. In no case since 2012 has the NLRB failed to take jurisdiction over a charter school when it was asked to do so. Teachers unions now recognize this jurisdictional tendency and may opt to initiate NLRB jurisdiction and voting procedures themselves.

The Foundation is planning to update other state versions of its *Leveling the Playing Field* series.

We are encouraged that the charter school movement is receiving accelerated impetus following the appointment of charter school advocate, Betsy DeVoss, as U.S. Secretary of Education.

We anticipate that a new Republican-appointed majority of the NLRB will perhaps follow a different path than its Obama administration predecessor. The current Department of Education is certainly more charter-friendly, and charters may proliferate, creating even greater demand for *Leveling the Playing Field*. Because of changes in the composition and policies of the National Labor Relations Board and the Federal Department of Education, there is a need to update the respective state-specific monographs in the series (and add additional states). We plan to publish new editions of several state-specific versions of *Leveling the Playing Field*, following the California edition, to highlight significant developments in labor law as applied to charters.



2017 ANNUAL AWARD HONOREE

RICHARD J STEPHENSON

Philanthropist, entrepreneur, global merchant banker and servant leader, Richard J Stephenson is the founder and chairman of Cancer Treatment Centers of America® (CTCA). He has been Chairman of the Board since the company's inception in 1988.

Taught by his parents to live a life in accordance with the moral code – When you see someone who is less well off than yourself, and you are in a unique position to do something about their plight, without harm to self, family or Lord, you simply step into the opportunity and do it…no fuss, no muss, no conversation – Mr. Stephenson is a 33° Scottish Rite Freemason, Shriner, Knights Templar, Distinguished Eagle Scout in America, and recipient of the prestigious 2017 Horatio Alger Award, which since 1947 has honored the achievements of admirable leaders who have succeeded despite facing adversity, and who are committed to higher education and charitable efforts in their local and global communities.

Following his mother's death from cancer, and the painfully dreadful reality of her lack of "hope fulfilling" options, treatment and care, Mr. Stephenson made a promise to change the face of cancer care..."I never wanted to see another cancer patient suffer the agony of living without hope." Thus, he and his family founded CTCA® in 1988 to fulfill that promise and introduced to the world what he aptly coined the Mother Standard® of care, the kind of care you would want for your loved one. During Mr. Stephenson's tenure as Chairman, CTCA has pioneered and proven the importance of a new paradigm in cancer care that empowers patients and their caregivers by providing them with services and programs they desire, where and when they desire them, in one seamless and comprehensive setting. In this setting, they are offered more innovative, integrated and hopeful options with which to better manage their cancer and enjoy a greatly enhanced quality of life.

Today, through its national network of hospitals specializing in the treatment of adult patients with cancer, CTCA offers an integrative approach to care that combines advancements in precision cancer treatment, surgery, radiation, chemotherapy and immunotherapy, with supportive therapies designed to manage side effects and enhance quality of life both during and after treatment. CTCA also offers a range of clinical trials to reveal new treatment options supported by scientific and investigational research, and is rated one of the most admired hospital systems in the U.S. in national consumer surveys.

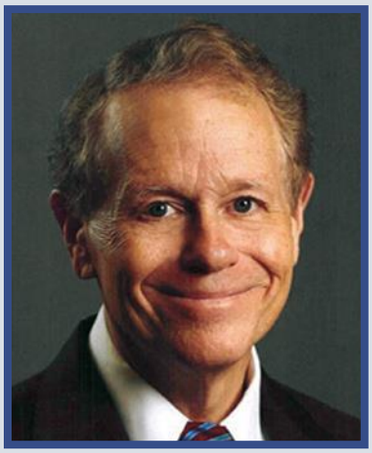
Prior to founding CTCA, Mr. Stephenson developed a career as a highly successful international merchant banker. He graduated in 1963 from Wabash College and, while earning his J.D. degree from Northwestern, he established International Capital Investment Company (ICIC), where he

still serves as Chairman.

In 1991, Mr. Stephenson founded, chairs and supports Gateway for Cancer Research, which to date has raised more than $75 million to fund more than 140 cutting edge clinical trials around the world. This nonprofit organization spends 99 cents of every dollar received from public contributions to fund these trials, which trials have changed the course of life and hope for thousands of cancer patients. Today, the Stephenson family, including his wife, Dr. Stacie Stephenson, and his five children, are all actively and passionately devoted to his mission.

Richard J Stephenson is an outspoken advocate for private property, individual freedom, small and unobtrusive government, and the rule of law. He is a student of the famed Scottish philosopher and economist, Adam Smith, who argued that markets are ultimately moved by consumer decisions and that, therefore, in all things having to do with markets, it's always and only about the customer. As a servant leader, Mr. Stephenson intently practices this belief in customer-centrism in his merchant banking business, and even more deliberately and assiduously at CTCA, where he reminds everyone that "it is always and only about the patient!"

Introducing Mr. Stephenson



TIMOTHY E. FLANIGAN, ESQ.

Timothy E. Flanigan is the Chief Legal Officer for Cancer Treatment Centers of America® (CTCA). With a rich background as a leader and senior legal advisor, he has more than 35 years of experience in public companies, the private practice of law, and in senior levels of government service.

Prior to joining CTCA, Flanigan served as Senior Vice President and Principal Deputy General Counsel at BlackBerry, Limited where he was responsible for the legal, business affairs and corporate security functions, as well as the company's global government relations efforts. Previously, he was a senior partner with the international law firm McGuire Woods, LLC, and Senior Vice President and General Counsel at Tyco International, where he helped successfully revitalize that $40 billion enterprise. Flanigan served the United States in multiple roles throughout his career, including Senior Law Clerk to the Honorable Warren E. Burger, Chief Justice of the United States. He also served as Deputy Counsel to President George W. Bush, where he coordinated legal strategy throughout the executive branch on anti-terrorism and other issues. He was nominated by President George H.W. Bush and confirmed by the Senate as Assistant Attorney General for the Office of Legal Counsel. Flanigan earned his law degree and his MBA from the University of Virginia, and a bachelor's degree in history from Brigham Young University.

Introduction of Richard J Stephenson by Timothy E. Flanigan

Good evening, Ladies and Gentlemen. It is a privilege to be here this evening to introduce our honoree. Richard J Stephenson is, as you are about to experience, a truly memorable person. Everyone who knows Dick has a story about him. Permit me to relate one of mine.

In July 2015, Katie and I were in Cheyenne, Wyoming to enjoy the annual Frontier Days rodeo and celebration of the Great American West, a week-long party its promoters call the "Daddy of 'em all" meaning that it is the biggest and best of all rodeos anywhere. People come from all over the world to attend. If you are like me and never quite outgrew the dream of being a cowboy, Frontier Days is where you want to be.

The real point of Frontier Days, however, is not simply nostalgia for a bygone era. It is a celebration of the free and independent, the striving and sometimes brash spirit that is the heritage and I hope future of America. It is about broad vistas of land, sky and human potential. It is about daring to go where few have gone before, breaking trails, clearing obstacles and seeing grand possibilities. It is also about Americans living up to their ideals to be kind, welcoming of new arrivals and ever willing to reach out to help those in need.

So there I was, in the middle of this noisy and bustling western extravaganza when Dick Stephenson called my cell phone to size me up as a possible general counsel for CTCA and his other family businesses. I had been told that Dick was a merchant banker. I would not want to offend any among us this evening, but bankers are stereotypically a staid lot. Stuffy. So I expected a polite and restrained first conversation with Dick, followed at some point by breakfast at his club, interviews with "his people," etc.

But from the first words Dick spoke it was clear that he is not a staid or stuffy man. This man is passionate of heart and exuberant of spirit. He spoke excitedly of the fun he is having of founding and growing CTCA and of building new businesses throughout the world. He mentioned limitless possibilities and the need to take risks to reap rewards. And he said he was looking for a general counsel who would join him in breaking trails, clearing obstacles as we, to use his words, "move on down the road in the celebration of life!"

He spoke with deepest conviction of his family's commitment to do the right thing and their mission to help cancer patients find the very best information, medical treatment and support they need to combat that dread disease.

Well that was one harmonic moment for me! It was as if the spirit of Frontier Days had taken over an app on my cell phone and was speaking directly into my ear, encouraging me to become a pioneer and throw my lot in with Dick Stephenson, to take risks and build new enterprises, to chase dreams, all the while doing good to those most in need of care.

His commitment to doing good for what he described as the Moral Code with roots in his Masonic tradition, resonated deeply with my own Mormon religious convictions and echoed the Apostle Paul's

injunction to lift up the hands that hang down and strengthen the feeble knees.

I was hooked. Though it took another six months to seal the deal, I was certain from that first conversation that I wanted to ride with Dick Stephenson. Those original impressions of Dick have been strengthened over time. I have also come to know other important things about him. That his heart's treasure is not in his businesses or his other worldly accomplishments but rather lies squarely with his family, his dear wife, Dr. Stacie J. Stephenson, and his children, Dr. Chris Stephenson, Annie Stephenson-Hostetler, Shawn Stephenson, Jenny Keller and Shelby Stephenson — all with us this evening — and their families. That he is an accomplished horseman and coach driver. He loves to ride his Harley. That he is a connoisseur of many things including the best music and beautiful sculpture. That he is a fellow pilot who has achieved the difficult and coveted instrument rating. Dick is a libertarian — albeit perhaps with an asterisk or two. One might find it incongruous that a libertarian would choose to build his flagship business in such a benightedly over-regulated sector as healthcare. Why would he do this? The answer can be found in the fact that Dick and his leadership team at CTCA, including our CEO & President , Dr. Rajesh Garg, look at the total picture of market and regulatory forces and see, in the folds and creases of that picture, opportunities to drive innovation and serve the needs of an ever-widening circle of cancer patients.

To be sure, Dick has his detractors. Some have caviled at the for-profit status of CTCA. They misperceive greed where they should recognize an honest and deeply held conviction that the free market and competition are the best engines to drive efficiency, quality service and great outcomes for patients. They also fail to understand the philanthropic spirit that so deeply motivates Dick and his family. Wherever the family does business, from Switzerland to Singapore, they are as engaged in building opportunities for people as they are in building profit.

Like a true libertarian, Dick puts his heart and soul into efforts to rein in the regulatory deep state and to protect individual rights, including property rights. He is thus a fitting honoree for the Atlantic Legal Foundation, an organization I am proud to be associated with and that so vigorously pursues those same ends. Tonight Dick Stephenson joins a long list of distinguished recipients of the Foundation's annual award.

Ladies and gentlemen, I am delighted to introduce to you the Chairman and Founder of Cancer Treatment Centers of America®, Richard J Stephenson – the Daddy of 'em all!

Remarks of Richard J Stephenson
2017 Annual Award Honoree

Thank you, Dan and esteemed members of your board, for this wonderful invitation to be with you this evening. And thank you, Tim for that very nice introduction. Thanks also to the Atlantic Legal Foundation for doing the hard, but critical and widely heralded, work of advancing liberty, limited government, free enterprise, property rights, school choice and sound science.

Those of you less familiar with our wonderful host organization may be unaware that the Atlantic Legal Foundation has been singled out by the U.S. Supreme Court for its contribution to the use of "sound science" in regulatory and judicial proceedings. No other advocacy group has been so influential in this critical area, and Atlantic Legal Foundation's clients – among them more than 20 Nobel Laureates and scores of other renowned scientists – are grateful for the Foundation's steadfast insistence that our courts use and depend upon only scientifically sound evidence and expert opinions in their deliberations. Moreover, the Foundation's advocacy in support of limiting overreaching and burdensome regulation is simply outstanding.

At the end of 2017, the Foundation filed an amicus brief in the United States Court of Appeals for the Ninth Circuit, the most reflexively liberal – and most frequently overruled – federal court in the nation, challenging the pernicious agency practice of attempting to influence the outcome in pending cases by issuing regulatory interpretations, without affording a citizen's basic due process of notice and comment. Ladies and Gentlemen of the Foundation, I offer you my, and all of our citizens, heartfelt applause and gratitude for fighting – and winning – the good fight that has made such a difference for the public good. There are few things more important than that work, so keep doing what you're doing, with the knowledge that our Founding Fathers would be pleased and vigorously supportive, and our family is also! Given Atlantic Legal Foundation's unyielding commitment to advancing the rule of law and the original principles underpinning the U.S. Constitution, tonight I'd like to explore one inherently implied and critically-important dimension of America's founding: our entrepreneurial roots.

While the concept of entrepreneurship is fundamental to human existence, the word "entrepreneur" did not appear until it showed up in a French dictionary published in 1723, 53 years before Adam Smith's Wealth of Nations and our Declaration of Independence. It's a painful irony that France, the country that gave us the word "entrepreneur," fell in love with high taxes and punitive regulation, stifling its entrepreneurs and forcing many of them to seek their fortunes elsewhere.[1]

Webster tells us that "an entrepreneur is one who creates, organizes, manages and assumes the risks of a business or enterprise." However, in the "real world," as my family knows, an entrepreneur is typically someone whose credit cards are maxed out and whose family's home is 100% mortgaged – often to predatory lenders – to finance his or her fledgling business, and whose home (the family nest)

1. www.independent.co.uk/news/world/europe/french-say-au-revoir-to-france-over-two-million-french-people-now-live-abroad-and-most-are-crossing-9788348.html

is often lost to foreclosure when the business fails. Entrepreneurs – the primary creators, organizers and risk takers in business – continue today to be as important to the well-being of our citizens, our economy, and our nation, as they were at our founding, 242 years ago.

I have some insights, and will share some thoughts, about the state of entrepreneurship today, as well as the entrepreneurial mindset. My thoughts and insights are derived from many decades of launching businesses and creating thousands of employment opportunities. Then I'll close by telling you about the entrepreneurial enterprise that's more important to me and my family than every other initiative I've undertaken during my professional career. And, I'll also tell you about today's "good news" originating therefrom. But first, I'd like to take you on a short journey, which begins in a small town about 30 miles north of Indianapolis.

I was born in Sheridan, Indiana – population 1,200 people – where my dad was the town's only "druggist" (two syllables), and not the "pharmacist" (three syllables), which was too hard to pronounce for our town's folk. He was also our little town's "doctor" when our only real doctor was away! My mother was from Brazil – not the large country in South America – but the small town in Indiana where they mined coal and clay.

During Prohibition, she started going to speak-easies in nearby Terra Haute, at an Al Capone hangout, and was smoking at 14.[2] Before the old Virginia Slims cigarette commercial said, "You've come a long way, baby," my mother was already there – pursuing a pernicious habit that came back to haunt her, as I'll mention later. She was the perfect match for the man she would marry – my father – who liked to "kick the tires, light the fires, and get on down the road" in the "Celebration of Life" ... and so do I!

My parents provided warmth, nurturing and love in our home. They never once said a derogatory thing to me or to my brother. They were simply our loving Mom and Dad, but not everything was smooth, and perhaps not as it appeared.

We moved nine times before I was 12, renting homes wherever we could find them, and uprooted once because the bank foreclosed on the only home my parents ever owned. Three of the homes I lived in had no indoor plumbing. I wasn't born into any material wealth, as you can see, but we had the rich blessings and profound treasure of my parents' character. They bestowed upon us the view that the Moral Code governs honest and credible men and women, and that it should always govern their sons and daughters.

When I was a child, I delivered papers – Grit on Saturdays and the Indianapolis Star on Sundays, mowed lawns, delivered fresh milk from a nearby dairy farm, and many other things. These experiences taught me the value of hard work and of customer-centric thinking. A few other notables got their start in business by delivering papers, including Warren Buffett. Buffett delivered the Washington Post, and the money he earned helped him buy 40 acres of land when he was just 14. Decades later, he was on the board of the Washington Post.

I wasn't as successful in parlaying my paper route into anything, but I did go on to attend and graduate

2. https://www.thebalance.com/warren-buffett-timeline-356439

from Wabash College, a small and dynamic liberal arts college about 50 miles northwest of Indianapolis, and from Northwestern University's School of Law thereafter.

Other associations also left an indelible imprint on my character. When I was 13 years old, I became an Eagle Scout. Later as an adult I became a 33º Scottish Rite Freemason, the 6th generation Scottish Freemason in my family (my sons and son-in-law are now the 7th generation). One Freemason who shaped my thinking was Dr. Norman Vincent Peale, who is best known for teaching the power of positive thinking and co-founding the Horatio Alger Association of Distinguished Americans. I've read everything he ever wrote and think of him in many ways as my first mentor, after my parents. The Moral Code and the Power of Positive Thinking have always underpinned my approach to business and to life.

Like many Americans, I saw – and still see – a vast opportunity in everything ahead of me. That optimism propelled me to become a serial entrepreneur. The businesses I've built have been entirely focused upon the customers we serve. Discovering what the consumer values and serving only those values, better than others, is all I do. Whether its shopping centers in England, healthcare interests in Singapore, dental implants and household implements in Brazil and Chile, or veterinary pharmacies in the United States, everything we've built, and the thousands of folks who've helped build it, has been based upon the discovered values of the folks we've served.

One example of discovering customer values, and serving only those values customers hold dear, is the story of Cancer Treatment Centers of America, which I'll talk about in more detail shortly.

My philosophic foundation, professional and business practices as a libertarian, are based on a school of thought known as praxeology, which can be best summed up as the study of human action. That's also the title of Ludwig von Mises' magnum opus, Human Action, published in 1949. More specifically, it's based on the a priori observation that individuals continually make conscious decisions always to improve their prior condition as they see it.

If you've ever heard of praxeology, you probably know that it's often associated with the Austrian School of Economics, of which von Mises was a leading protagonist. My provocative, philosophic professors and mentors in this discipline included von Mises, Ayn Rand, Murray Rothbard, Leonard Read at the Foundation for Economic Education, Milton Friedman, and many more.

And I'm sure you know that the Austrian School of Economics is also associated with Friederich August von Hayek, another of my professors, who won the Nobel Prize in 1974. In short, I've been spoiled by my freedom-loving, libertarian professors, such that the logic that underpins the Austrian School is also what underpins my libertarian outlook.

It's my operating postulate that we weren't born with a pre-existing mortgage on our existence in bondage to anyone or anything, be it church, state or whatever. No one has the right to make decisions for any of us that are alien to our liberty and any natural, peaceful instincts. Men and women have always been in search of liberty. A fundamental prerequisite to liberty is the protection of private property and free enterprise – the right of individuals to keep and protect the fruits of their labors, and to freely exchange goods and services with each other.

Liberty is the freedom to choose. Risk is inherent in choice. Our Constitutional liberties both guarantee

and are nourished by the choices of risk-taking citizens deciding to offer their goods and services in the marketplace. Those individuals are engaged in entrepreneurship more often than not, and that's the theme I will cover in the remainder of my remarks.

When we think about entrepreneurs today, what names come to mind? Maybe Elon Musk, revolutionary in his Tesla automobiles and space ships, or Mark Zuckerberg with Facebook, Jeff Bezos with Amazon, or Bill Gates at Microsoft. Or maybe we think of Mark Cuban's "Shark Tank." But there's another group of American entrepreneurs who shouldn't be forgotten because they're central to the history of this great nation. We know them as the Founding Fathers. They pursued what was then a radical and unthinkable idea – to break free from their colonial overlords in England and create an entirely new order…indeed a new country…based on principles such as the rule of law and the right of citizens to pursue life, liberty, and happiness.

In today's terms, we can think of the Declaration of Independence as the mission statement and the Constitution as the business plan…the business plan for the world's first start-up nation. That business plan spelled out that "we the people of the United States," in search of a "more perfect Union" would "establish Justice, insure domestic Tranquility, provide for the common defense, promote the general welfare, and secure the Blessings of Liberty to ourselves and our Posterity." Entrepreneurship has helped the people of this great nation stay true to those principles, while also advancing them.

It's no coincidence that many of this nation's founders possessed considerable experience in business. In fact, many of them were entrepreneurs. Ben Franklin was the founder of a newspaper, the Pennsylvania Gazette, which featured the first accounts of his electric kite experiment. No fake news there. Alexander Hamilton was the founder of the Bank of New York – not the star of a Broadway musical – and that bank still exists today, with headquarters just five miles away from where we dine this evening.

Before serving as President, George Washington, was a successful farmer and fishing operator. He also cultivated hemp on his farm at Mount Vernon, but not the strain that's recently been legalized in a few states. It's probably good that his hemp was used for things like rope and clothing. Had he been smoking the hemp, who knows what America's founding might have looked like.

With founders like Franklin, Hamilton, and Washington, it's no surprise that our Constitution embodies fundamental principles of liberty, including economic liberty. Those principles enabled us to grow rich… not because we had more resources with which to create products and widgets. No, it's because we had the freedom to create goods and services, first, for ourselves, and for the benefit of others, and no one could steal our goods and services…the fruits of our labors…because we had the right of private property, protected, again, by the rule of law.

The Founders were determined to ensure that we would be a people governed by laws, not by the arbitrary and capricious whims of the nation's leaders. And, given the Founders' focus on the rule of law, coupled with their business backgrounds, is it any wonder that the most ambitious people from Europe and other parts of the world began to flock to our shores…and still do? And so, among other things, the spirit of opportunity and entrepreneurship is what distinguished this country from every other, from our earliest days.

It was entrepreneurs, possessed with the spirit of enterprise, who built the businesses that helped to make this country the richest in the world, and a model for others to emulate. I could recite that history, which is important, but I'd prefer to focus on the state of entrepreneurship today, since there are some worrying signs.

Last year, a professor and friend of mine at George Mason University, Tyler Cowen, wrote a book that described what was ailing the United States. His deliberately depressing title was, *The Complacent Class*. He pointed out that the share of jobs accounted for by start-up companies, relative to all jobs, is about 50 percent lower than it was in the mid-1980s. He also highlighted a decline in what's often called "dynamism."

For example, the frequency with which workers switch jobs has declined 50 percent over the past 15 years. You may ask: Why has the U.S. economy become less dynamic and less entrepreneurial? I'm not sure there's a short answer to that question, but it might not surprise you to hear that one of the factors is the heavy hand of the state. Occupational licensing is a growing burden in many states, where it takes 12 times as long to become licensed to cut someone's hair as it does to become licensed as an Emergency Medical Technician. Most of these regulations and licensing requirements are simply designed to protect existing incumbents.

Another example of regulation killing entrepreneurship is the 2010 passage of Dodd-Frank. A dramatic decline in new bank formation ensued. In 2005 there were 237 approvals of new bank charters, last year there were none, and only five were created from 2011 to 2016. Whether the intervention is at the state or federal level, it curtails economic activity, by unnecessarily interfering with consumer choice with a natural economic effect of raising the cost of banking services to businesses and consumers.

While I'm smart enough not to try to predict whether government officials will come to their senses, I'm nonetheless optimistic about the future. Technology has driven down the cost of launching a new business. Technology is also unlocking new opportunities. Just consider the gains that will be realized from self-driving cars: greater productivity and a dramatic decline in deaths and injuries from traffic accidents are foretold. If the forecasters are wrong, of course, insurance companies and personal injury lawyers will prosper! Everyone wins, regardless!

Similarly, drones will remake the shipment of goods, and it's possible we'll see single-passenger flying devices as well. These developments, and others like them, will be ripe for entrepreneurs, men and women who will identify new opportunities to better serve customers and create wealth. The creativity and ingenuity that made America a prosperous nation has not gone away. It just needs a jumpstart – having government get out of the way will be a critical step.

If you've had much exposure to entrepreneurs – whether successful or unsuccessful – you might have noticed something about them: they're driven, restless, often pretty ornery, and sometimes quite rebellious. Indeed, studies show this to be true.[3] And my wife and family would testify to the accuracy of these studies! They might have been troublemakers in school, and not excelled academically. Far from

3. www.newsroom.haas.berkeley.edu/study-finds-successful-entrepreneurs-share-common-history-getting-trouble-teenagers/

dampening this rebellious streak, we need to encourage it.

Listen to what the Irish playwright George Bernard Shaw once wrote: "The reasonable man adapts himself to the world; the unreasonable one persists in trying to adapt the world to him. Therefore, all progress depends upon the unreasonable man." Thank you, George – or Bernard, as he preferred to be called. I'm feeling better now!

Indeed, while we celebrate entrepreneurship, and encourage it, we must remember how difficult it is. Many more start-up businesses fail than succeed, and whether you succeed or fail, the process of building a business can be extraordinarily demanding. The response of the regulatory state, or "Nanny State," might be to step in and provide a larger and stronger safety net to protect entrepreneurs from failure. But that would be a huge mistake. No one is born with the "right" to succeed in his or her entrepreneurial endeavors. Competition among entrepreneurs helps to create higher-quality and less costly goods and services, which benefits consumers, while helping to advance the American Dream.

We typically think of entrepreneurs as providing the marketplace with new goods or services, with profits needed to keep the business sustainable. But another form of entrepreneurship involves starting organizations focused on some form of human betterment. Such business must, of course, be self-sustaining and identify and serve the consumer in exactly the same manner as other ventures. But they frequently provide their founders with rewards that may be less monetary and more psychic or "feel good", including the sublime satisfaction of knowing that the organization is having a positive impact on the human condition. I launched such an organization in 1988. It was (and is) Cancer Treatment Centers of America® (CTCA).

I founded CTCA six years after my mother died of cancer. She'd continued smoking during her adult years, but she kept it hidden from me and other members of our family. While her stoicism served her well throughout her life, it did not serve her well once she was diagnosed with transitional cell bladder cancer. She kept the diagnosis to herself for more than a year – she even swore her doctors to secrecy – and tried to take care of it herself, saying that no one in her family had been burdened with cancer and she knew she'd be OK, and she told her friends, "I don't want to bother my busy merchant banking son." By the time I learned of her condition, it had metastasized to her already-weakened lungs, as well as other parts of her body. I battled to save her life…but lost. Her death galvanized me to change the face of cancer, and to change it NOW.

Applying a fundamental entrepreneurial insight, I founded CTCA on the bedrock principal that it would constantly discover and rediscover what cancer patients and their families most need when faced with this awful disease. One such need is for care that matches clinical excellence with love and compassion. That led us to develop what I came to call the Mother Standard® of care. Visitors to our hospitals are almost universally impressed with the high level of compassion and empathy we bring to our clinical labors. We treat our patients – and each other – with the same dignity, love, and care that we received from our mothers and fathers.

Cancer patients also desperately need credible and actionable information regarding their particular disease. I used to wear a button on my lapel that read, "Cancer has a new enemy." When people

asked me what that meant, I'd explain that "Cancer's most dreaded enemy is an empowered patient." A fundamental commitment of CTCA® is to provide and empower patients with world-class information; information that is specific to their unique cancer and provides late-breaking innovations and meaningful options for them.

Our website, cancercenter.com, is reported to be the most visited and trusted cancer-focused site in the world. More than 3 million unique visitors come to the website every month in search of answers to their cancer and in search of hope.

Cancer patients, particularly those for whom first line therapies may not have produced a remission, deeply desire access to the most advanced therapies. To serve that need, we have examined more patients to uncover specific genetic mutations in tumors and provided more actionable treatment options than any other. These options have saved lives.

Cancer patients and their families want information regarding treatment results to help them choose among cancer care providers. To that end, we publish the most comprehensive compendium of cancer treatment results of any of the 1,500 cancer care providers in the U.S. This compendium helps prospective patients make more informed choices about their care.

This focus on the needs of the patients and families has helped CTCA become one of the most respected brands in the world. According to the just announced 2017 YouGov brand health ratings, a closely watched index of brand power, CTCA reigns as the most positively perceived national hospital system among 42 pre-eminent hospital brands tracked in the survey, topping such names as Mayo Clinic, Memorial Sloan Kettering, Johns Hopkins Medicine, Cleveland Clinic and MD Anderson Cancer Center.

And we're entirely patient focused. We don't honor and hold dear the pharmaceutical companies, the insurance companies or the government. In brief, we honor and are "always and only about the patient!" And this is what draws like-minded physicians to CTCA. Physicians who are driven, with a compassionate and selfless patient-centric focus, to change the face of cancer. Other players in the healthcare arena have learned to take a back seat to what we discovered: the Mother Standard of care and Patient Empowerment works.

Patients want to be…and have a right to be…in charge of their decision-making and their destiny! The biggest fight you have in your life if you're a cancer patient is to find someone who'll give you hope – a reason to believe. And today, when there's so much positive and encouraging data in support of reasons to be hopeful, providing this hope is both easy and empowering…and it's priceless to receive when you're an otherwise fearful, forlorn and hopeless cancer patient.

This evening, I'm happy to report, in many cases cancer is no longer an acute and certain killer. In some of its forms, it has become more of a chronic disease that folks can learn to manage, no differently than they manage diabetes, arthritis and other potentially debilitating maladies.

Now, to be clear, CTCA is not our business…we're a global merchant banking family. CTCA is our family's calling, in my mother's memory. In fact, unlike other of our entrepreneurial enterprises, our goal at CTCA is to put ourselves out of business! We'll do that once our citizens have defeated cancer.

There remains a lot of work ahead – both for CTCA and for all of you at the Atlantic Legal Foundation.

But for tonight, at least, my work is mostly finished. I want to thank the Foundation again for honoring me and giving me this opportunity to be with you tonight.

As I stand here, I'm reminded that I'm really standing on the shoulders of those who have made my achievements possible. Those individuals include my professional colleagues, spanning many years… many of whom are here this evening…my intellectual, professional and business mentors, and most of all, my family.

There is no greater honor or blessing than a loving and supportive family,

and I've been repeatedly honored and blessed in that regard, from my childhood to today. I wouldn't be where I am without them. Thank you again and best wishes for the year ahead, and beyond. And now it's time to "kick the tires, light the fires and get on down the road" in the "Celebration of Life!"

Richard J & Dr. Stacie J. Stephenson

Piper, Shawn, Morgan & Shelby Stephenson, Jennie Keller,
Dr. Chris Stephenson, Annie Stephenson-Hostetler & Bill Hostetler

Dan Fisk:

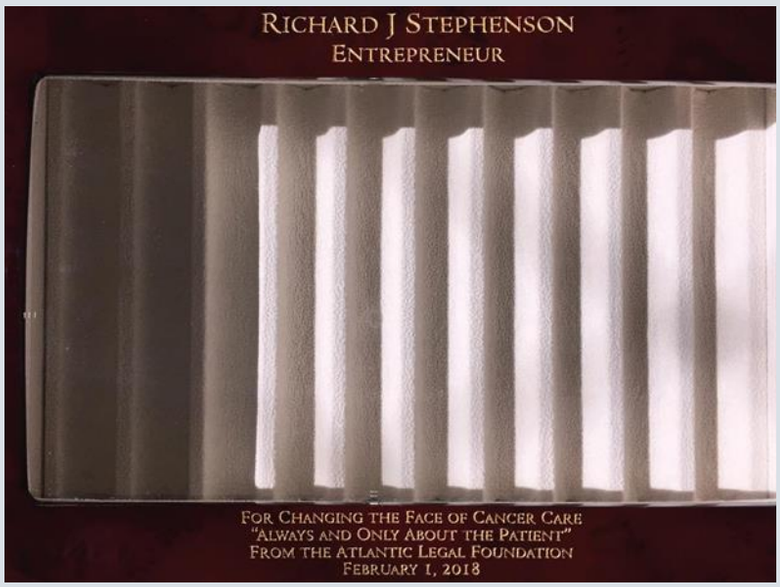
That was enlightening, insightful, entertaining and remarkably worthy of publication in Atlantic Legal's Annual Report for 2017. We have come to the point in our program where we have gifts to present. Rather than unwrap these presents you can take them home neatly wrapped as they are...and we have on our video screen, visible for all, just what they are. A beautiful pens case made out of burl wood. Engraved:

RICHARD J STEPHENSON
ENTREPRENEUR

FOR CHANGING THE FACE OF CANCER CARE
"ALWAYS AND ONLY ABOUT THE PATIENT"
FROM THE ATLANTIC LEGAL FOUNDATION
FEBRUARY 1, 2018

Accompanying this handsomely engraved pen set is a classic Mont Blanc fountain pen with a broad nib, as we understand you prefer... and that's the nub of it... it's a nice combination and we hope you are pleased. Incidentally, in the process of procuring these gifts for you, we learned that classic antique Mont Blanc pens have sold at nearly $300,000... we paid less!

Thank you so much for your insightful remarks tonight and for honoring us by allowing us to honor you.



Photographs from the Annual Awards Reception and Dinner

The Planning Committee

Michael Ravenhill, Dan Fisk, Michael Myers

Harvard Hall

Flower Arrangement

Dinner Table

Menu

Program

The Reception

Cynthia-Steve Baer, Dan & Diane Fisk

Richard J & Dr. Stacie J. Stephenson & The Fisks

Cliff Storms, Dan & Diane Fisk

Cliff Storms, Dan Fisk

Jake Baker & Tracy Bacigalupo, Diane & Dan Fisk

Diane-Dan Fisk, Tom Walsh

Scot Elder, Diane Fisk, Tracy Bacigalupo, Jake Baker

Richard J & Dr. Stacie J. Stephenson

Dr. Chris Stephenson, Dr. Stacie J. & Richard J Stephenson

Bill Hostetler, Karen Castles Grey,
Dr. Stacie J. & Richard J Stephenson

Nancy & Dean Lurker, Richard J & Dr. Stacie J. Stephenson

Karen Castles Grey, Dr. Stacie J. Stephenson,
Liz McDermott

Jim Grogan, Bonnie Daneker, George Daneker, Dr. Maurie Markman, Michael Myers

Nadeem Ahmed, Annie Stephenson-Hostetler, Pam Hendrickson, Bill Hostetler, Kristin Darby, Robert Johnson, Dr. Chris Stephenson

Piper, Shawn, Morgan & Shelby Stephenson, Jennie Keller, Dr. Chris Stephenson, Annie Stephenson-Hostetler & Bill Hostetler

Morgan, Piper, Shawn Stephenson

Bob Bittman, Ned Childs, Nick Lewis, George Terwilliger, Ben Seib

Dean & Nancy Lurker, Dr. Maurie Markman

Cameron McBride, Andrew McBride,
Marty-Millicent Kaufman, Charles Gyer

Dalila Velez - James Rose

David Smith, Anan Samara, Donna & Ronald DeSoiza,
Colleen Frayne, Jim Frogue

Dean & Nancy Lurker, Melanie, Timothy & Katie Flanigan

Denise Pitts, Patrick Bevilacqua, Dave Leitner, Mike Perez

James Rose, Dalila Velez, Ron Gilg, Pablo Graham

Jeff Ryan, Pablo Graham

Cassandra Ravenhill, Cindy Mayo

Kate Burke, Jim Grogan, Chris Burke

Liseth Lambright, Jay Ferraro

Michael Colter-Smith, Steven Ray

Patrick - Jennifer Daugherty

Phil Selliger, Cliff Storms

Shelby Stephenson, Annie Stephenson-Hostetler, Jennie Keller

Timothy - Katie - Melanie Flanigan, Dan Davis

Tom - Kathleen Schulte, Heidi - Joe Jeffery

Richard J Stephenson, Dr. Maurie Markman

Richard J Stephenson, Kristin Darby, Dr. Maurie Markman

Dr. Rajesh Garg, Annie Stephenson-Hostetler, Nadeem Ahmed

Richard J Stephenson, Jay Foley

Reception

Reception

Reception

Reception

Reception

Harvard Hall, Richard J Stephenson

Richard J & Dr. Stacie J. Stephenson

Richard J & Dr. Stacie J. Stephenson

Welcome Remarks

Dan Fisk

Dan Fisk

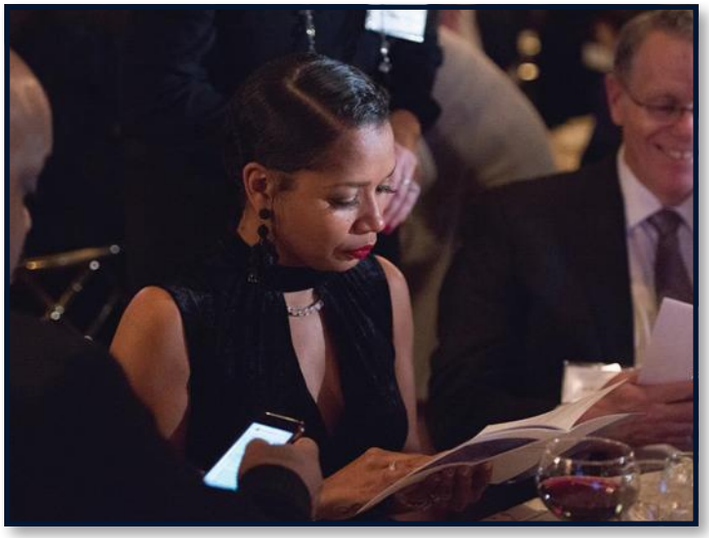
Dan Fisk

Dan Fisk

Dan Fisk

Dinner, Chatter & Fun

Timothy Flanigan



Mr. & Mrs. Callaway, Tim Flanigan

Timothy Flanigan, Annie Stephenson-Hostetler, Katie Flanigan

Fraiser, Cassandra Ravenhill

Robert & Cindy Mayo, Teresa Huber

Shawn Mack

Dr. Maurie Markman, Jay Foley

Tracy Bacigalupo, Cliff Storms, Nancy Lurker

Jake Baker, Tracy Bacigalupo, Cliff Storms, Nancy Lurker

Jessica Barilli

Teresa Huber, Morgan Stephenson

Teresa Huber, Morgan Stephenson

Honor Guthie Cary, Roger Guthie Cary

Michael Burton, Dr. Stephen Ray

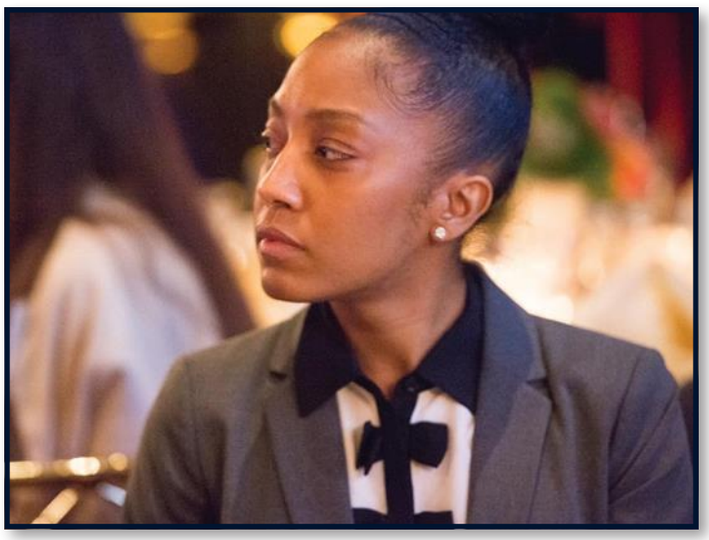
Liseth Lambright

Nancy Lurker

Kathleen Schulte

Donna DeSoiza

Harry Jakubowitz



You cannot be serious...!

Paul Ferdenzi

George J. Terwilliger III, Bob Bittman

Michael Burton

Dr. Jay Ferraro

Joel Forman

James Rose, Mike Perez

Columbia Clancy

Danielle Petrillo

Bridget Nagle

Stephen & Cynthia Baer

Atlantic Legal Foundation Director Jay Stephens Introducing Director Tim Flanigan

Jay Stephens

Jay Stephens

Jay Stephens

Jay Stephens

Atlantic Legal Foundation Director & Chief Legal Officer of Cancer Treatment Centers of America® Tim Flanigan Introducing 2017 Annual Award Honoree Richard J Stephenson Founder and Chairman of Cancer Treatment Centers of America®

Timothy Flanigan

Timothy Flanigan

Timothy Flanigan

Richard J & Dr. Stacie J. Stephenson

Richard J & Dr. Stacie J. Stephenson

2017 Honoree Richard J Stephenson Addresses "Start-Up Nation: Entrepreneurship From America's Founding to Today"

Timothy Flanigan, Richard J Stephenson

Richard J Stephenson

Richard J Stephenson

Richard J Stephenson

Richard J Stephenson

Richard J Stephenson

Richard J Stephenson

Richard J Stephenson

Richard J Stephenson

Richard J Stephenson

Richard J Stephenson

Diane & Dan Fisk

Presentation of the Award

Dan Fisk, Richard J & Dr. Stacie J. Stephenson

Dan Fisk, Richard J & Dr. Stacie J. Stephenson

Dan Fisk, Richard J & Dr. Stacie J. Stephenson

Dan Fisk, Richard J & Dr. Stacie J. Stephenson

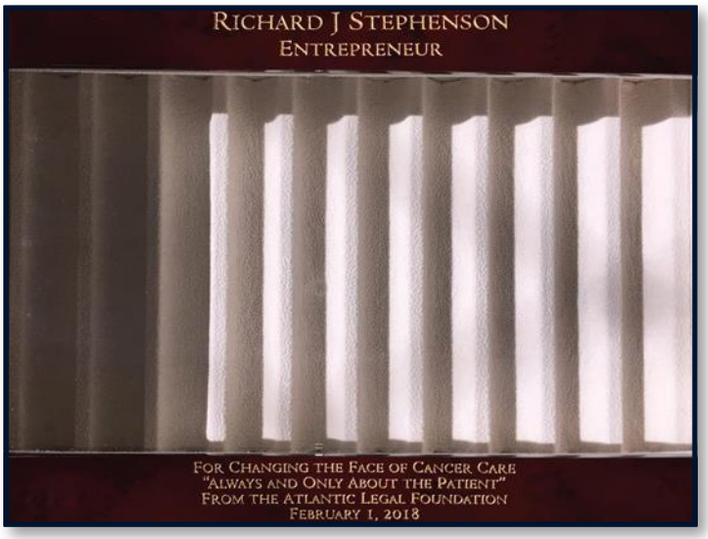
Dan Fisk , Richard J & Dr. Stacie J. Stephenson

Dan & Diane Fisk, Dr. Stacie J. & Richard J Stephenson

Dan Fisk , Richard J & Dr. Stacie J. Stephenson

Richard J & Dr. Stacie J. Stephenson

The Award



The Tenors
Victor - Fraiser - Clifford

The Tenors

The Tenors

The Tenors

The Tenors

The Tenors

The Tenors

The Tenors

The Tenors

Fraiser, Victor, Clifford

Fraiser

Katie & Timothy Flanigan, Dr. Chris Stephenson, Victor

Enjoying the Special Evening

Dr. Stacie J. Stephenson

Dr. Stacie J. Stephenson

Dr. Stacie J. Stephenson

Cassandra Ravenhill, Dr. Stacie J. Stephenson

Richard J & Dr. Stacie J. Stephenson

Michael & Cassandra Ravenhill

Cassandra Ravenhill

Piper Stephenson

Annie Stephenson Hostetler, Bill Hostetler

Bill Hostetler

Ben Seib

Karen Castles Grey

Karen Castles Grey

Richard Cullen, Rob Jesmer

William Leone

Dave Leitner

Patrick Bevilacqua, Dave Leitner

Cassandra Ravenhill, Richard J & Dr. Stacie J. Stephenson

Dr. Stacie J. Stephenson & Tenor Clifford

Tenors Victor & Fraiser, Diane Fisk

Richard J & Dr. Stacie J. Stephenson & The Tenors

Annual Award Recipients 1988-2017

2017

Richard J Stephenson
Founder and Chairman of the Board
Cancer Treatment Centers of America®

2016

Hon. Harvey L. Pitt
Chief Executive Officer
Kalorama Partners, LLC
Chairman of the United States Securities and Exchange Commission (2001-2003)

2015

Hon. Frank Keating
President and CEO (Ret.)
American Bankers Association
Governor of Oklahoma (1995-2003)

2014

H. Lawrence Culp, Jr.
President and CEO (Ret.)
Danaher Corporation

2013

Bill Nuti
Chairman, CEO and President
NCR Corporation

2012

William H. Swanson
Chairman and CEO
Raytheon Company

2011

Edward J. Ludwig
Chairman of the Board
BD

2010

W. James McNerney, Jr.
Chairman, President and CEO
The Boeing Company

2009

Chad Holliday
Chairman of the Board
DuPont

2008

William C. Weldon
Chairman of the Board and CEO
Johnson & Johnson

2007

Hon. Fred F. Fielding
Counsel to
President George W. Bush
Former Counsel to
President Ronald Reagan

2006

Thomas J. Donohue
President and CEO
U.S. Chamber of Commerce

2005

Edward D. Breen
Chairman and CEO
Tyco International Ltd.

2004

Hon. George J. Mitchell
Former United States Senator
Chairman, The Walt Disney Company
Partner, Piper Rudnick LLP

2003

Maurice R. Greenberg
Chairman and CEO
American International Group, Inc.

2002

Henry A. McKinnell, Jr., Ph.D.
Chairman and CEO
Pfizer Inc

Annual Award Recipients 1988-2017

2001

Hon. William S. Cohen
Former Secretary of Defense and United States Senator

2000

Norman R. Augustine
Retired Chairman and CEO Lockheed Martin Corporation

1999

General P. X. Kelley
Former Commandant of the Marine Corps

1998

Hon. Rudolph Giuliani
Mayor of New York City

1997

Hon. Donald Rumsfeld
Former Secretary of Defense

1996

Bruce Atwater
Retired Chairman and CEO General Mills, Inc.

1995

Alfred C. DeCrane, Jr.
Chairman and CEO Texaco Inc.

1994

Malcolm S. Forbes, Jr.
President and CEO Forbes, Inc.

1993

Amb. Carla Anderson Hills
United States Trade Representative

1992

Paul H. Henson
Retired Chairman and CEO Sprint Corporation

1991

Walter B. Wriston
Retired Chairman and CEO Citicorp

1990

Irving S. Shapiro
Retired Chairman and CEO DuPont

1989

Edmund T. Pratt, Jr.
Chairman and CEO Pfizer Inc

1988

Hon. William E. Simon
Former Secretary of Treasury

Board Speaker

Jeffrey Rosen
President and Chief Executive Officer
National Constitution Center

Jeffrey Rosen, President and Chief Executive Officer of the National Constitution Center, spoke about a number of current and contentious Constitutional issues being discussed across the country at the Foundation's March 23, 2017 Board Dinner in Philadelphia. The Center is the only institution in America chartered by Congress "to disseminate information about the United States Constitution on a nonpartisan basis."

Rosen is a professor at The George Washington University Law School, and a contributing editor for The Atlantic. He is a highly regarded journalist whose essays and commentaries have appeared in the New York Times Magazine, The Atlantic, on National Public Radio, and in The New Yorker, where he has been a staff writer. The Chicago Tribune named him one of the 10 best magazine journalists in America and a reviewer for the Los Angeles Times called him "the nation's most widely read and influential legal commentator." He received the 2012 Golden Pen Award from the Legal Writing Institute for his "extraordinary contribution to the cause of better legal writing." He is the author of Louis Brandeis: American Prophet; The Supreme Court: The Personalities and Rivalries that Defined America; The Most Democratic Branch: How the Courts Serve America; The Naked Crowd: Reclaiming Security and Freedom in an Anxious Age; and The Unwanted Gaze: The Destruction of Privacy in America. He is co-editor, with Ben Wittes, of Constitution 3.0: Freedom and Technological Change.

Jeffrey Rosen talked to the members about the future of the Supreme Court and the Constitution. He gave a demonstration of the National Constitution Center's Interactive Constitution, which unites America's leading conservative, libertarian, and liberal scholars to discuss every clause of the Constitution and has received more than 10 Million hits since its launch a year ago. He also talked about the Constitution Center's new bi-partisan Commission, a Madisonian Constitution for All, which unites top thought leaders in America to ask what Madison would make of our current Congress, presidency, courts, and media and how we can resurrect Madisonian values today. And he discussed the Gorsuch nomination and the effects that Judge Gorsuch might have on the Supreme Court.

Rosen is a graduate of Harvard College; Oxford University, where he was a Marshall Scholar; and Yale Law School.

New Board Members

Recruited in 2017, the following Directors assumed responsibility early in 2018

John L. Brownlee

John L. Brownlee is a litigation attorney who is the Chair of Holland & Knight's National White Collar Defense and Investigations Team, and a member of the firm's Directors Committee. Mr. Brownlee has extensive experience in white collar defense, securities enforcement and internal and Congressional investigations, having represented many companies and individuals in criminal and civil litigation, as well as in administrative matters before various federal and state agencies. He has litigated numerous cases to verdict.

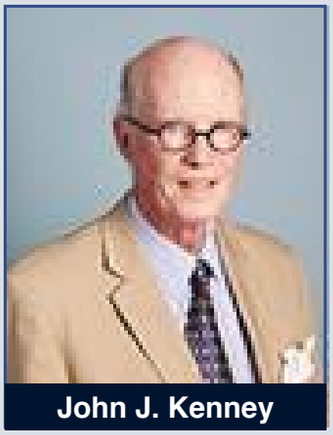
Mr. Brownlee served more than 10 years at the U.S. Department of Justice – both as the United States attorney for the Western District of Virginia and as an assistant U.S. attorney for the District of Columbia. Prior to joining the Justice Department, he served as a law clerk for U.S. District Judge Sam Wilson. In addition, Mr. Brownlee served on active duty in the U.S. Army in the infantry and in the Judge Advocate General Corps (U.S. Army Reserves), and is a graduate of the Army's Airborne and Ranger programs. He holds a Top Secret/SCI level security clearance.

Mary L. Garceau

Mary L. Garceau Senior Vice President, General Counsel and Secretary The Sherwin-Williams Company, a global leader in the manufacture, development, distribution, and sale of paints, coatings and related products. Garceau oversees delivery of domestic and global legal services, advising management on all aspects of legal matters including corporate governance, litigation and regulatory matters. She joined the company as Associate General Counsel - The Americas Group in February 2014 and played a lead role in managing the legal affairs related to the multi-billion dollar acquisition of The Valspar Corporation, completed in June 2017. Before joining The Sherwin-Williams Company, Garceau spent two years as General Counsel of Thirty-One Gifts LLC, one of America's fastest growing direct sales companies, and five years as Vice President, General Counsel and Corporate Secretary of Bob Evans Farms Inc., a publicly held restaurant and food products company. Before beginning her in-house legal career, Garceau served as a partner at the Columbus office of Vorys, Sater, Seymour and Pease LLP, concentrating her practice in securities, mergers and acquisitions, and general Corporate matters. She is a 1994 graduate of the University of New Hampshire, where she received her Bachelor of Arts degree in political Science (summa cum laude) and a 1997 graduate of the Vanderbilt School of Law. Garceau resides in Cleveland Heights, Ohio, with her husband, Derek, and two sons, William and Andrew.

Jonathan Graham

Jonathan Graham joined Amgen Inc. in 2015 as Senior Vice President, General Counsel and Secretary Before joining Amgen, Graham was senior vice president and general counsel at Danaher Corporation. He was responsible for all legal, governance, regulatory, risk, compliance, and EH&S matters. Prior to Danaher, Graham was vice president, Litigation and Legal Policy at General Electric Company and a partner at Williams & Connolly LLP in Washington, D.C. Graham received a bachelor's degree in Economics from Pitzer College and a J.D. from the University of Texas. He also served as a law clerk to the Honorable Joseph T. Sneed, U.S. Court of Appeals for the Ninth Circuit.



John J. Kenney

John J. Kenney is a partner of Hoguet Newman Regal & Kenney, LLP in New York where he specializes in complex civil and criminal litigation, government investigations, and corporate governance and compliance law. He is a Fellow in the American College of Trial Lawyers and served as an Assistant US Attorney in the Southern District of New York for nine years (1971-1980), the last three as the Executive Assistant US Attorney. He became a litigation partner at Simpson Thacher in 1981, prior to joining his current firm in 2007. He has tried cases in 16 state and various federal courts, the great majority of which were jury trials, and argued appeals in the United States Courts of Appeals for the First, Second, Fifth and Eighth Circuits and various state appellate courts. Mr. Kenney is listed in Best Lawyers in America (Business Litigation, Corporate Governance, Compliance Law, and Criminal Defense/White Collar Crime) and Super Lawyers in New York. He is a published author on legal topics and Chairman of the Board of the Poetry Foundation, Chicago, Illinois and a past Trustee of Historic Deerfield, Inc., in Deerfield, Massachusetts. He received his B.A. from St. Michael's College in 1966 and his J.D. from Fordham University Law School in 1969.

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Mallinckrodt Professor of Physics, Emeritus
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Thank You.

With your help, the Atlantic Legal Foundation has been able to successfully pursue its mission to advocate for the rule of law, limited effective government, free enterprise, individual liberty, school choice and sound science.

The Board of Directors, Advisory Council and Staff of the Foundation thank you for your continued support.

Atlantic Legal Foundation: Mission and Programs

The Atlantic Legal Foundation is a nonprofit, nonpartisan public interest law firm with a demonstrable four-decade record of advancing the rule of law by advocating limited and efficient government, free enterprise, individual liberty, school choice and sound science. To accomplish its goals, Atlantic Legal provides legal representation and counsel, without fee, to parents, scientists, educators, and other individuals, corporations, trade associations and other groups. The Foundation also undertakes educational efforts in the form of handbooks, reports and conferences on pertinent legal matters.

Atlantic Legal's Board of Directors and Advisory Council include the active and retired chief legal officers of some of America's most respected corporations, distinguished scientists and academicians and members of national and international law firms.

The Foundation currently concentrates primarily on four areas: representing prominent scientists and academicians in advocating the admissibility in judicial and regulatory proceedings of sound expert opinion evidence; parental choice in education; corporate governance; and the application of constitutional guarantees to individuals and corporations faced with the authority of government agencies.

Atlantic Legal's cases and initiatives have resulted in the protection of the rights of thousands of school children, employees, independent businessmen, and entrepreneurs. In case after case, Atlantic Legal brings about favorable resolutions for individuals and corporations who continue to be challenged by those who use the legal process to deny fundamental rights and liberties. Please visit www.atlanticlegal.org and www.defendcharterschools.org where the Foundation's most recent activities are detailed.

Atlantic Legal Foundation

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www.atlanticlegal.org

www.defendcharterschools.org

Atlantic Legal Foundation

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