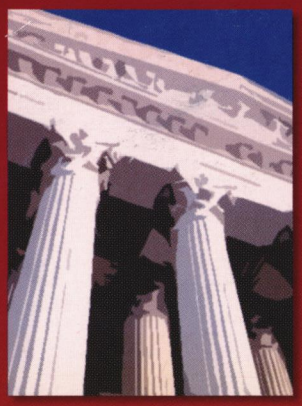

Atlantic Legal Foundation

2007 ANNUAL REPORT

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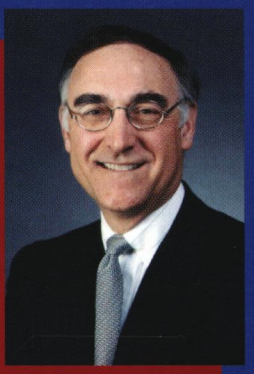
The Year in Review

The year 2007 was one of solid accomplishment. The Foundation took on a number of cases and controversies in diverse areas touching on issues that are fundamental to the sound application of the rule of law. For example, in the Supreme Court of the United States the Foundation filed an amicus brief in support of Indiana's photo identification law, designed to protect against voter fraud, and supported a petition for certiorari challenging the Alien Tort Statute; in the Second Circuit Court of Appeals, the Foundation defended a corporation's ability to require that commercial customers waive class action litigation and submit disputes to arbitration; in New Jersey federal court we are seeking equal protection in the awarding of government contracts; and in Chicago, the Foundation is challenging a local ordinance which, if upheld, in principle would impose an intolerable burden on free enterprise.

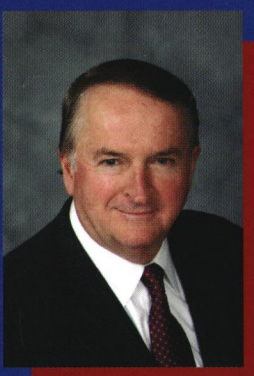


Dan Fisk
Chairman

The Foundation's support for parental choice in public education across the country also continued. Work on two guides for charter school leaders faced with the challenge of union organizing was completed. These guides, as have others in the series, have been endorsed by prominent charter advocates.

The details of these projects, all undertaken without charge and without any government funding, are described elsewhere in this report.

We took particular pride this year in honoring with the Foundation's Annual Award — for the very first time — an attorney who has spent much of his professional career in private practice. Fred F. Fielding's remarkable career as a private practioner and as a counselor to two presidents of the United States (among many other government assignments) reflects the best to which members of the legal profession can aspire. We were proud to add his name to the distinguished list of those we have honored. His remarks on receiving the Foundation's award, reproduced in this report, called for a return to the commitment to government that has served the nation so well in the past but is now threatened by stubborn partisanship and a scandal-fixated media.

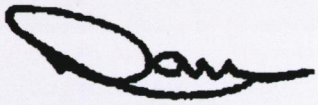


Bill Slattery
President

We welcomed Victoria P. Rostow and Augustus I. duPont to the Board and Sam Scott Miller to the Advisory Council. Our leadership remains one of our principal strengths. The Foundation's directors and advisors review carefully the requests we routinely receive for assistance and their perspective is an invaluable asset. We also have been able to leverage our work with the energetic volunteer efforts of law firms with which our board and council members are affiliated.

We note with profound sorrow the death of our director emeritus and former President of Rockefeller University Dr. Frederick Seitz, a true giant in the scientific community for many decades. He was an enormously valuable member of our Advisory Council and the recipient of the Foundation's Lifetime Achievement Award in November, 2006.

We remain grateful to the corporations, foundations and individuals who honor the Foundation with their support, enabling us to bring reasoned advocacy to issues that need and deserve to be addressed.



Hayward D. Fisk
Chairman

William H. Slattery
President

Annual Award to Fielding

The Honorable Fred F. Fielding received the Foundation's Annual Award for 2007 at a dinner celebration at the Army and Navy Club in Washington, D.C. on January 16, 2008. Mr. Fielding was appointed Counsel to President George W. Bush in February 2007. He served in the same capacity under President Reagan from 1981 until April, 1986. Most recently, he was a member of the 9/11 Commission and senior partner of Wiley Rein & Fielding LLP.

Introduction by Richard Wiley

Ladies and gentlemen, almost a year ago, I started hearing stories that my name partner and colleague was thinking about going to the White House. I told friends "no way, it can't happen. After all he had that same job, White House Counsel, 21 years ago, during the Reagan Administration, and he was also Deputy Counsel during the Nixon Administration. He's not taking that job. Don't worry", I assured my colleagues.

And then I thought, maybe I ought to just check with him. So I asked Fred and he replied, "yes, I am taking it." And I said, "Why would you do it"? And he gave a very brief answer that was also very instructive: "Because the President asked me".

And after that, I couldn't say anything.

For our firm to lose our best known and most well-respected partner, and for me to lose a very good friend, it was kind of tough medicine. But even with all that pain, I've never been more proud of Fred, because it was a totally selfless act and it was in the national interest. Of course, it was easy to understand why the President would want Fred Fielding. He wanted a superb lawyer, a wise counselor, and also somebody who

Dick Wiley introduces his former partner, Fred Fielding.

could keep a confidence. And let me tell you, I was Fred's partner for 21 years and we drove in each day together. For 21 years, and he never told me a single thing. Believe me, he's a guy who can keep a confidence. So, the President made a very wise choice for the Administration and for the country.

Fred Fielding grew up in outlying parts of Philadelphia. He was of Pennsylvania Dutch, German descent. The original family name could be translated in English as "Flying Field," ergo "Fielding." When his dad, at a very early age for Fred, died in a tragic train accident, his mother raised him. She had a boy who was not only industrious but very imaginative and curious, and a great student who was interested in art, music, and literature. He always did well in school, particularly so at his beloved Gettysburg College, where he was an honor student and president of the student body. More recently, he has been a medal of honor winner there and a trustee. And he did even better at the University of Virginia Law School, where he was a member of the Law Review.

After graduation, Fred went to Morgan, Lewis & Bockius for seven years with a little time out to serve in the Army, then on to the Nixon Administration, back to Morgan, Lewis for another seven years and, finally, to the Reagan Administration. Along the way he met the very charming and beautiful Maria — and Fred and I would agree that Tennessee women are the very best.

The Fieldings lived in North Arlington, and my wife Betty and I got to know them very well. One day, I said to him "why go back to that big old firm? We've got this new little firm and we'll change its name from Wiley and Rein to Wiley, Rein and Fielding. And so it was, which brings me back full circle.

Without doubt, Fred has had a remarkable career — more awards, recognitions and honors than one could possibly enumerate this evening. In particular, we know, very recently, about his great service on the 9/11 Commission where, characteristically, Fred was behind the scenes doing the work and not getting on the airwaves and making speeches.

When the President got Fred Fielding, he got a superb lawyer, a wise counselor, a guy who can keep confidences; and also, he got a great American.

Ladies and Gentlemen, Fred Fielding.

The Price of Partisan Warfare Part I

Thank you, very much. That was a very generous introduction by my erstwhile partner of over 20 years and very long-time friend. Thank you, Dick.

It's so much fun to be here. I think I'm going to go out more at night. But, I would like to breach protocol a little, to introduce my other partner, my partner of 40 years, Maria, who certainly deserves an award for just being that.

I want you to know how much I really do appreciate your honoring me tonight. I read the list of your prior honorees, and I'm humbled because I hold each of them in such high esteem. So, you honor me doubly.

Being honored by this group is special to me because the goals of the Foundation are really my personal goals in life. And because your membership is comprised primarily of people who are active practitioners in my beloved profession, and also have devoted their energies to public interest, at the state, local or federal level. So, as I say, to repeat myself, this is really very special, and I thank you for the evening and for the honor.

2007 Annual Award Recipient
Fred Fielding

"Being honored by this group is special to me because the goals of the Foundation are really my personal goals in life."

I have to tell you about the title of my speech ["The Price of Partisan Warfare ... Part I"], because of course, you have to have a title of your speech. So .... I think I have your attention, now. I just have to figure out what Part II is. But this speech is about the price and cost of partisan warfare, and I have to start out with a disclaimer that, obviously, what I'm going to say to you tonight are purely my own personal views. I'm not speaking on behalf of anybody else, or floating a "trial balloon" for wiser folks to shoot down.

"...we face a problem and we must find answers for it, or our people and our Government will pay a very dear price."

Tonight I would like to share some observations with you and present a problem that really is bothering me, and it's a growing concern to me. I don't know the answers to it, but I do know that we face a problem and we must find answers for it, or our people and our Government will pay a very dear price. We've all watched over the years with horror, increasingly so, every night when we watch the evening news, where fraud, cover up, scandal, or stonewalling has become average fare for the news broadcast. Scandals seem to be coming so fast, that we no longer even can be imaginative in how we name them — everything is just a "gate." And there are several cynical explanations for that. Either the government's been overthrown by knaves, or the public servants and politicians are more corrupt than they used to be, or they're more clever than they used to be, or all of the above. But while the answers may not be clear, what is clear is that we are collectively immersed in an era of "scandalgates." And how did we get here and why, is the question.

I think that, first, every one of us can fairly say that the common conception of the Constitution as a precise system of separated powers is a slight misnomer. There are powers, and it is a system of separate powers. But those powers have to be meshed together for it to work. And thus, it only works if there is a respect on the part of each branch for the prerogatives and the obligations and the powers of the other branches. Actually, this is implied in the whole concept of checks and balances that we all learned in Political Science 101.

But in such a system, it is a practical necessity for the holders of the power to work out a series of accommodations with one another. If they don't, it doesn't work. And today, we do not have that between the executive and legislative branches. There is really no equilibrium in the relationship. And more importantly, there is no comity between the branches, which is so necessary to accommodation. As a matter of fact, there is an absence of comity.

"...it is a practical necessity for the holders of the power to work out a series of accommodations with one another. If they don't, it doesn't work. And today, we do not have that between the executive and legislative branches."

Now, in recent years, starting with the early days of Vietnam and then Watergate, the institutional Presidency and the institutional Congress have been really jousting, almost constantly. This didn't start in November 2006, to be sure. It had been going on before that. But in particular at present, Congress is seemingly attempting to retake some of the authority that had evolved to the executive branch since the 30's, and the President, on the other side, is trying to resist the breaches that have occurred in ceding some of that power back in more recent years.

So, it is turned into a struggle of titans — with titanic implications — and there seems to be no respite, no moment of truce. There is no time for collective institutional reflection or institutional thought as to what is going on. Even when Congress and the President seemingly, in current times, appear to reach consensus, usually because of extreme political pressure on both sides, the result may only be short-lived. I see, and point to you, currently, the struggle that's going on over the so-called FISA re-authorization. There, something had to be done, the political pressures brought together a solution, but now again, we're about to go back into a short-fused respite, and all the institutional issues are coming back.

From the executive's point of view, negotiating on Capitol Hill on issues that primarily relate to power can be a very frustrating experience. One of the reasons, I guess, is the somewhat recent proliferation of Congressional committees and subcommittees. So, now it's Huey Long's dream come true — every man's a king and every congressman or senator is a subcommittee chairman. So, you have that, but probably more important than that, and more troublesome, is this — to attract the public's attention, or to assert legislative authority over the executive branch, what we see is a new growth industry of "generalized oversight." Now, I'm not talking about an appropriations committee that has its necessary oversight. I'm talking about committees that have general oversight over any executive branch activity. And with that, sadly, I submit to you, is also a growing tendency toward what I will call the "criminalization of political de-

bate," because what you have are policy differences but they get dressed up and the allegation becomes that they constitute criminal activities — but it's really oversight and policy debate. It is presented as having a criminal tone to it in order to attract attention to the issue, or to the questioner.

"...a growing tendency toward what I will call the "criminalization of political debate..."

To be sure, in addition, the hot light of public and political scrutiny on the executive branch goes right into the oval office with increasingly constant intensity. That's probably true partly because of the singularity of the institution itself. But it is also true because the institution, right now, is attempting to respond to some of its perceived challenges to its power, as we've just discussed a moment ago.

So, I fear that we must expect, for better or for worse, a continued frenzy of oversight on the hill. Now, these fights are not always necessarily partisan; they are often issues of constitutional prerogative. But, that gets exacerbated by politics. And when a partisan issue can suddenly be fashioned into being an institutional issue as well, then it becomes tremendously important and gets bipartisan support in Congress. Then what spills out to us, in the public and into the press, is a scandal — and it's often dressed up as a crime.

Now, let me pause for a second. I mentioned a Part I in the title of my speech (when I made up the title off the top of my head). That was really because there's an equally serious related issue, which I only want to touch on briefly tonight but it is really worthy of extensive airing, and it's the current problem of confirmation hearings, or more accurately the lack of confirmation hearings.

You know, you need a confirmation hearing before the presidency can perform its constitutional obligation to fill the ranks of the executive and the judicial branches. That is in the Constitution. I also acknowledge that the Senate has a constitutional power to advise and consent. But its refusal to hold hearings, or even to hold up or down votes on people, is really becoming a very, very serious constitutional issue and crisis, not just in the executive branch but in the judicial branch, as well. For purposes of tonight's discussion, let me only say that it is also having a very serious impact on the recruiting of people for public service. We ask people to serve, and then they put their lives on hold for months, years or more waiting for a hearing that may never come. They don't even get a hearing. I don't think it takes much imagination to see what that person would advise the next person who has the opportunity to do public service.

"We ask people to serve, and then they put their lives on hold for months, years or more waiting for a hearing that may never come."

In addition to all the intramural squabbling between the branches, there is another phenomenon which has occurred, which I think is relevant to what we are talking about tonight. When I came to Washington from Philadelphia in 1970 to take a job at the White House, servicing the public was still considered an honorable enterprise. There was an idea, which is even derided in some quarters today, that there was *noblesse oblige* about public service, and as I understand that term, I don't mean that the richest or elite should govern. I think in those days it meant that the most talented, the most able, most educated and the most well intentioned people — they were called, I guess "the best and the brightest" — had a responsibility to do public service. That was part of your contract with your government. Those who made the commitment and entered public life, understood and empathized with each other — even it they were of different political parties — that was what people did when they were in public service. And certainly, Republicans and Democrats disagreed then as they disagree now, and often very forcefully. But most of the time, they also respected each other, and were respectful of each other. And it was assumed by the public that most public officials were trying to do the right thing and that they were trying to make things a little better. It wasn't instantly assumed, by the opposing party or by the public, that the politician had evil motives or was doing something out of ill-will. That wasn't the assumption. Vietnam and Watergate changed that.

Watergate was a national tragedy and not only because some of our leaders broke the law and betrayed the trust of the American people. Together with the Vietnam war, Watergate divided the political establishment in a very destructive way.

"...this notion of mistrust and skepticism of public servants grew and was fueled by, and sometimes fueled, the institutional clashes I'm discussing. It was further fueled by the increased media interest in what we're talking about."

Vietnam started Americans thinking that maybe those that govern our country might be deemed criminal in their behavior and that their claim to authority was therefore not legitimate. Watergate fed and nurtured that seed. But then as the country moved beyond Watergate, some didn't get past that,

and instead of dying on the vine, this notion of mistrust and skepticism of public servants grew and was fueled by, and sometimes fueled, the institutional clashes I'm discussing. It was further fueled by the increased media interest in what we're talking about. But it got us to the point where we are now, where we have a political system that's strangled.

"...we have a political system that's strangled."

And I don't mean to suggest that things before Vietnam and Watergate were perfect. Perhaps it is true, as many argue, that before Vietnam and Watergate the press and the American people were too trusting of officials. Perhaps politicians did cover for one another's indiscretions. Perhaps the press gave a pass to their favorites. Perhaps it was a pendulum that had to swing, and it had to swing far out. But the pendulum metaphor generally assumes that if it goes out it swings back and somewhere in the middle. And I am sad to report that I don't see that happening. Instead, I see growing distrust and rancor about and among public officials. About and among them, and where public officials used to call for voters to oust their political opponents, today, if they lose, they assert an illegitimate incumbency. They call for prosecutors to investigate and jail their political and policy rivals, again in what I called the criminalization of political debate if policy differences occur. And this fuels a deep, deep polarization of the American people into camps. They are like warring, feuding families, who never forget real or imagined slights of the past. And, of course, this culture of mistrust is perpetuated by an eager press and an accepting public.

"I see growing distrust and rancor about and among public officials."

"...this culture of mistrust is perpetuated by an eager press and an accepting public."

Maybe this is nothing new. We are caught up in the passions of our time right now, and I understand that, and we tend to forget the battles of the passions of other times. I was looking at some political cartoons of Andrew Jackson in the debates over the Bank of the United States, and also recalling how critical everyone was of Abraham Lincoln up until the end of the Civil War. So, it reminds us that American politics has always been a no-holds-barred, contact sport, and partisans on each side believing the righteousness of their cause justified any and all means to attack and vilify. But even if it is not new, it is not good. It is just that simple. It's not good. And I can't help thinking, again, my own personal view, that we are in the midst and in the grip of a very poisonous partisan period. And I'm not here to say who started it, when, why or point fingers. That's not the point. But I will say this — we are paying a serious price in several ways that cripple our government's ability to address serious domestic and international problems.

"...we have to do something to dispel the public's assumption of criminality, or corruption, and replace it with some sort of perceptions and assumptions of respectability and proper motivation."

So, as a start, we have to do something to dispel the public's assumption of criminality, or corruption, and replace it with some sort of perceptions and assumptions of respectability and proper motivation. This doesn't mean we should excuse our leaders and our public servants if they disappoint us. Not at all. But it does suggest that we collectively should recognize that there is a problem that we've created, we've gotten pulled into, so that we can seek ways to stop this perception that an undertaking of public service is merely a prelude to an inevitable fall from grace. The result of that is not acceptable, because that will deny us the willingness of people to serve, and they are the very people that we want to have serve this country.

We need the revolving door. Everybody laughs at that! But we do need the revolving door. We need people with private sector experience, who understand the impact of government on the private sector, so that they can go into government and take that knowledge, learn more, do what they can, and then go back into the private sector again. We need that.

"...in the present climate, such good people may decide the cost of doing public service is just too high."

But in the present climate, such good people may decide the cost of doing public service is just too high. They may conclude it is just not worth the risk of somebody's life's reputation, their future, their family tranquility, their family esteem, to be sacrificed on a political altar! People just will not pay the price if this continues. Thus, we are risking losing the services of our best and brightest. That result is just not acceptable.

In closing, let me, lest we forget, remind us of the centuries-old wisdom that Plato gave us when he warned, "The punishment of wise men who refuse to take part in the affairs of government is to live under the government of unwise men." That is what it is all about. Wise men will refuse to participate. Their penalty is to be ruled by unwise men. That is just not where we want to be.

So, thank you all very much for listening to my thoughts and your kindness. You have honored me so much, and I mean it sincerely.

Annual Award Recipients 1988-2007

Each year since 1988 the Foundation has honored with its Annual Award a person who exemplifies the ideals and principles of public service and private enterprise.

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

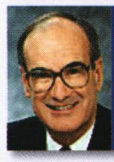
2001 
Hon. William S. Cohen
Former Secretary of Defense
and United States Senator

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
Chairman 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

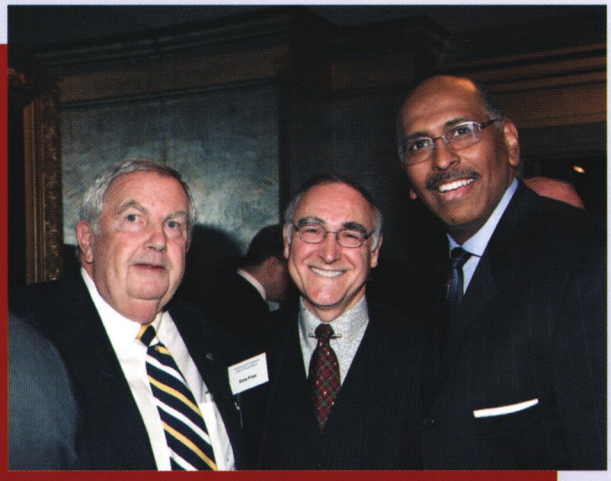
1989 
Edmund T. Pratt, Jr.
Chairman and CEO
Pfizer Inc

1988 
Hon. William E. Simon
Former Secretary of Treasury

Celebrating Fred Fielding

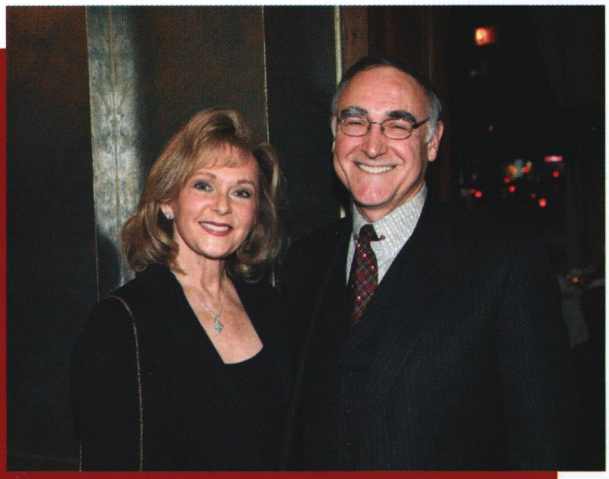
Philip Davis of Wiley Rein, Honoree Fred Fielding and Dick Wiley of Wiley Rein

General P.X. Kelley, former Commandant of the Marine Corps, Patricia Apy and Atlantic Legal Advisor David Apy



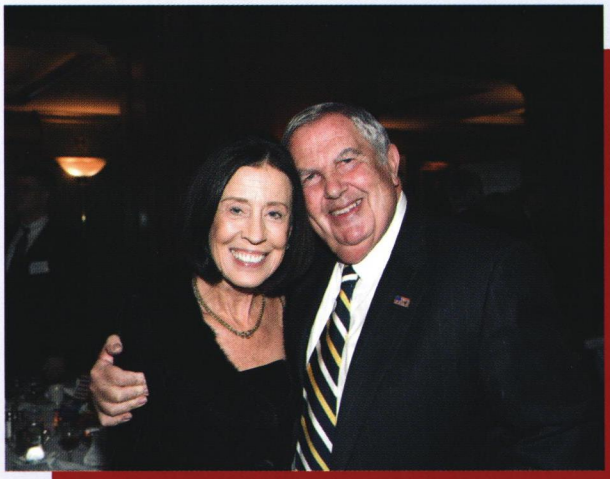
Fred Fielding, Atlantic Legal Chairman Dan Fisk and Hon. Michael Steele, former Lieutenant Governor of Maryland

Fred Krebs, President, Association of Corporate Counsel, and Dan Fisk



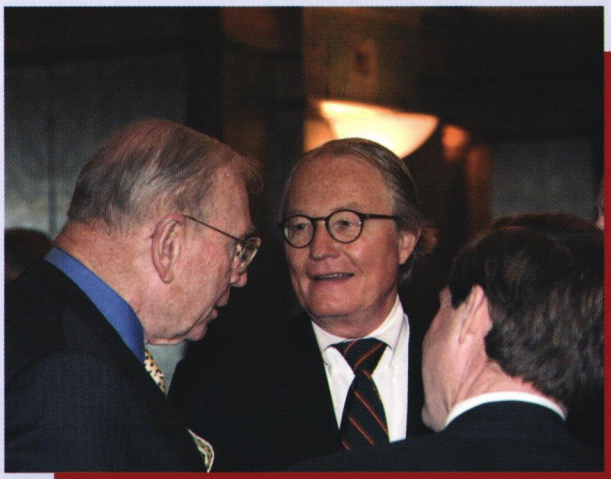
Diane and Dan Fisk

Deputy White House Counsel J. Michael Farren, Roni Haggart and guest



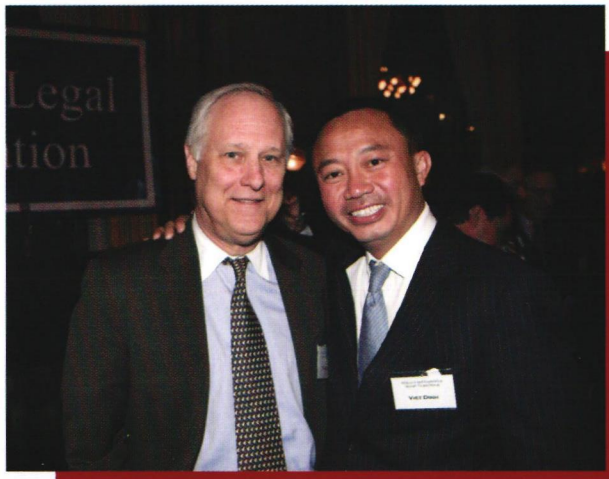
Maria and Fred Fielding

Harry Pettit, former Assistant Attorney General Viet Dinh, and Larry McMichael of Dilworth Paxson



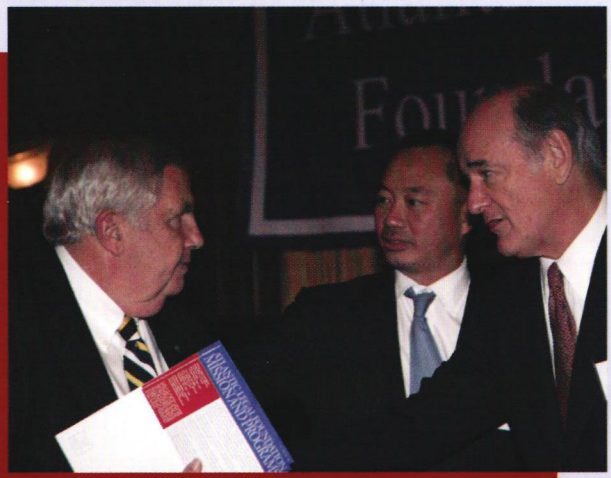
General Kelley, Professor Francis McGovern of the Duke University School of Law, David Apy

Andrea Unterberger, Assistant General Counsel, Corporation Service Company, and Jim Rizzo of McDermott Will & Emery



Tom Boyd of DLA Piper and Viet Dinh

Atlantic Legal Director Bill Graham, motion picture and television star Hugh O'Brian, Diane and Dan Fisk



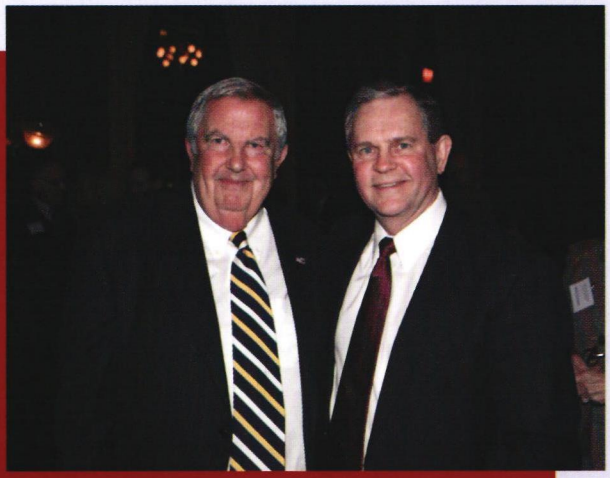
Fred Fielding, Viet Dinh and Atlantic Legal Director Steve Harmelin

Bill Slattery offers welcoming remarks

Dan Fisk introduces Dick Wiley

Dan Fisk presents Honoree Fielding with Tiffany mantel clock

Fred Fielding delivers his views on "The Price of Partisan Warfare – Part I"



Fred Fielding and Jay Stephens, General Counsel of Raytheon Company

Atlantic Legal Director Bob Haig (l) and Robert N. Baldwin, Executive Vice President and General Counsel, National Center for State Courts

Deterring Voter Fraud

At the conclusion of oral argument in *Crawford v. Marion County Election Board*, in which the Foundation filed an *amicus* brief for the Conservative Party of New York State, Justice Scalia mused: "Why shouldn't we also ask whether our judgment does more harm than good; whether...the remedy for the inconvenience to a small number of people is to wash away the whole statute, which in most of its application is perfectly okay?" This sentiment nicely summarized the competing positions in the appeal where other justices also questioned whether voters in fact were disenfranchised and the extent of the inconvenience imposed. The Foundation brief emphasized that Indiana's law imposed a slight burden on a relatively small number of voters and need not be subjected to strict scrutiny.

States have long required voters to identify themselves at the polls, but no state had a mandatory requirement to produce a valid photo ID issued by a government agency until Indiana and Georgia passed such laws in 2005. The issue is under study or being advanced in other states, and local governments increasingly are passing ordinances requiring photo IDs.

The U.S. District Court for the Southern District of Indiana upheld the photo ID law and the Court of Appeals for the Seventh Circuit affirmed. Writing for the majority, Judge Richard Posner acknowledged that eligible voters would be disenfranchised, but said the risk of voter fraud outweighed that risk.

Supreme Court Review of Alien Tort Statute

Partnering with the international law firm DLA Piper, the Foundation filed an *amicus* brief on behalf of itself and four current or former general counsels of major United States-domiciled international corporations in support of a petition for *certiorari* by more than 50 major international corporations, seeking review of a decision of the Court of Appeals for the Second Circuit holding that a case brought under the Alien Tort Statute, 28 U.S.C. §1350, could proceed in U.S. courts against foreign corporations for their role in "aiding and abetting" South Africa's former apartheid regime.

The overriding issue is whether allowing the cases to proceed, over the strong objections of the current majority government of South Africa and opposition of the Executive Branch of the United States, comports with the Supreme Court's recent decision instructing trial courts to undertake "case specific" political question "deference" and "international comity" inquiries. The Second Circuit has held that such an inquiry should not be made at the outset, but should await further motion practice, despite a statement of interest filed by the State Department and briefs supporting dismissal filed by the United States Department of Justice and the Republic of South Africa.

Atlantic Legal's brief focused on the principle of international comity which teaches that one nation should, under most circumstances, defer to the legislative, executive or judicial acts of another nation and that under the principles of comity, United States courts ordinarily refuse to review acts of foreign governments and defer to proceedings taking place in foreign countries, allowing those acts and proceedings to have extraterritorial effect in the United States. The democratically-elected government of the Republic of South Africa,

with the overwhelming mandate of its people, is actively addressing the legacy of apartheid, and failing to recognize the comity to which South Africa is entitled and instead permitting the cases to continue is an affront to that country's sovereignty, perpetuating the harm comity is designed to prevent.

The Foundation also argued that expansive exposure to potential ATS actions created by the Second Circuit's ruling places the international business community in an untenable position because, in this case, the defendant corporations were complying with the official policies of the United States and other Western democracies to promote economic and social reform in South Africa through economic engagement. We argue that these are matters best left, as a matter of constitutional architecture and common sense, to the political branches, as the Court has recognized for many decades.

Inadequate Notice in Eminent Domain

The owner of property condemned to permit construction of a shopping mall in Port Chester, New York was vindicated in his contention that his due process rights were violated by New York's inadequate newspaper notice of the proceedings against his property.

The Foundation, along with the Institute for Justice, has represented William Brody who alleged that he did not receive notice of the village board's decision to condemn his property. Brody did not seek judicial review because he did not see the newspaper publication of the village board's determination.

In a significant victory for property owners in New York, the Court of Appeals for the Second Circuit ruled that the state must give property owners the maximum notice practicable to satisfy the due process requirements of the United States Constitution, and that mere publication in the "Legal Notices" section of the local newspaper, as provided in New York's Eminent Domain Procedures Law, was inadequate: "Where the names and post office addresses of those affected by a proceeding are at hand, the reasons disappear for resort to means less likely than the mails to apprise them of its pendency." The court also agreed with our argument that the notice must also "conspicuously mention" that it triggers the 30-day review process.

After a trial to determine if Brody in fact had actual notice of the condemnation, the district court ruled that a lack of notice "both in form and content" rendered the taking a violation of procedural due process.

Chicago's Foie Gras Ban

In many parts of the country, local governments have adopted regulations designed to protect consumers from the use of products deemed unhealthy or unsafe. While such restrictions have been challenged with public policy and constitutional arguments, Chicago's measure prohibiting restaurants from serving *foie gras* has nothing to do with the health of Chicago consumers. Rather, the restrictions are based on what Chicago's City Fathers deemed the "unethical" treatment of geese and ducks raised elsewhere than in Chicago. The Foundation's clients, the Illinois Restaurant Association and a Chicago restaurant, sought to enjoin enforcement of the ordinance on the grounds that it does not come within the city's home rule powers and that it impermissibly interferes with interstate and foreign commerce.

The Foundation believes the case involves important constitutional and public policy issues – whether under the Interstate and Foreign Commerce Clauses of the Constitution a state or locality can ban the distribution and sale of lawfully-produced goods simply because the local legislature has "moral objections" to some aspect of the production or use of the item.

The trial court dismissed the complaint, holding that there was no Commerce Clause violation. Plaintiffs have appealed to the Court of Appeals for the Seventh Circuit, and Atlantic Legal is lead counsel on the appeal.

Class Action Waivers and Arbitration

Four Atlantic Legal directors, current or former chief legal officers of major United States corporations, submitted an amicus brief in the Second Circuit Court of Appeals backing American Express's waiver defense to class actions brought by commercial customers. The Foundation pointed out that corporate leaders have been required to forgo the risks of engaging in innovative products and services because of the likelihood of disruptive, expensive and time-consuming class actions with intrusive discovery, trial expense and the specter of outlandish damage demands, sometimes with punitive damages added.

Recognizing the burdens of defending against class action litigation, many businesses have elected to have disputes resolved by individual arbitrations and to adopt collective action waivers as part of their arbitration clauses with their business customers. These clauses have been found enforceable by most courts in which they have been challenged.

Charter Schools

The number of charter schools in states where they are sanctioned continues to grow and in most cases existing charters have waiting lists for admission. Test scores in charters are improving, frequently surpassing scores in nearby district schools. Nevertheless, even where conventional schools are failing to educate, charters face vigorous opposition from champions of the *status quo*—notably teachers' unions and public officials courting union support.

The Foundation believes that charters and other forms of school choice deserve encouragement. To that end we have expanded our series of guides, titled *Leveling the Playing Field—What Charter School Leaders Need to Know About Union Organizing*. We also continue to counsel individual charters needing assistance and to collaborate with groups advocating school choice and accountability.

Conference on Corporate Litigation

A blue chip list of chief legal officers and corporate litigators will participate in the Foundation's October 30, 2008 Conference entitled "How to Reduce Corporate Litigation Costs and *Still* Win Your Case." This full-day program, co-sponsored by the New York City Bar Association, will be led by Conference Co-Chairs Atlantic Legal Directors Frank Menaker and Augustus I. duPont and Atlantic Legal Advisor Henry Butler. Atlantic Legal Director Robert Haig, editor of the four-volume treatise *Successful Partnering Between Inside and Outside Counsel*, will serve as moderator.

New Board Members

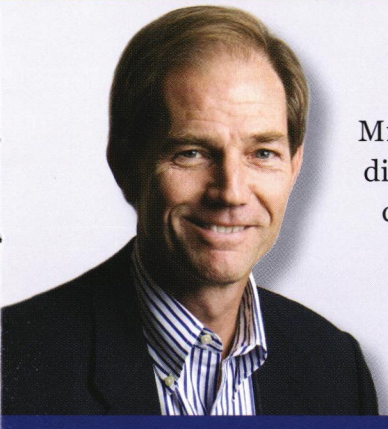
Victoria P. Rostow

Victoria P. ("Penny") Rostow is a partner in the Public Law & Policy Strategies group of Sonnenschein Nath & Rosenthal LLP, specializing in assisting complex financial institutions in regulatory, legislative and political matters.

Prior to joining Sonnenschein, Ms. Rostow served as Senior Vice President and head of Federal Government Relations for Bank One Corporation, where she directed all federal representation and lobbying of Congress, the Executive branch and the Federal Financial Service Regulatory Agencies. Ms. Rostow served as the Deputy Assistant Secretary for Domestic Finance and Banking Legislation, where she led Treasury's efforts to enact the bill that eventually became the Gramm-Leach-Bliley Act.

From 1987 to 1990 she served as Director of Medical Liability Studies for the Institute of Medicine of the National Academy of Sciences, where she published two major studies on medical malpractice reform.

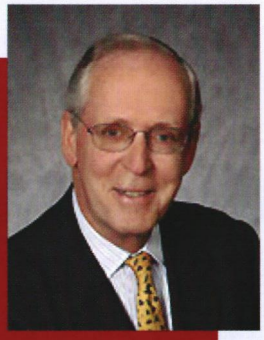
Ms. Rostow's prior private practice work includes specialization in banking and housing finance law and legislation. Ms. Rostow is a *magna cum laude* graduate of Yale College, has a Masters degree in Economics from Kings College, Cambridge, and graduated with honors from Yale Law School, where she was a Senior Editor of the Yale Law Journal.



Augustus I. duPont

Mr. duPont is Vice President, General Counsel and Secretary of Crane Co., an NYSE-listed diversified manufacturer of engineered industrial products. Prior to joining Crane Co., Mr. duPont served as General Counsel of Reeves Industries, Inc., a privately-held diversified textile manufacturer and Sprague Technologies, Inc., an NYSE-listed manufacturer of electronic components. Mr. duPont received his A.B. degree in history from Stanford University in 1975 and his J.D. degree from the University of Chicago Law School in 1978.

Also of Interest

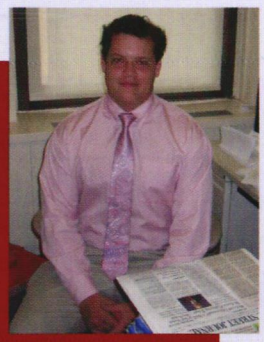


Sam S. Miller

Sam Scott Miller, Partner in Orrick, Herrington & Sutcliffe in New York City, has joined Atlantic Legal's Advisory Council. Mr. Miller is former Vice President and General Counsel of Paine Webber Incorporated.

Benjamin E. Johnson

Benjamin E. Johnson, Executive Director of the American Immigration Law Foundation, addressed "From Rhetoric to Reality: An Insider's View of the Immigration Debate" for Atlantic Legal's Board and Council in June in New York City.



Alexander Toth

Alexander Toth, who interned for Atlantic Legal in the summer and winter of 2007.

Professor David Bernstein

Professor David Bernstein of the George Mason University School of Law addressed the latest developments in scientific and other expert evidence for Atlantic Legal's Board and Council in March, 2007 in Washington, DC.

Atlantic Legal's Interns

Atlantic Legal's 2007 summer interns: (l-r) Brett Gewirtzman, Kate Wright, Pilar Loyola, Alan Williams and Jeremy Krau, standing before "Seated Lincoln" by Daniel Chester French.

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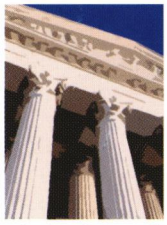
Atlantic Legal's Board of Directors and Advisory Council include the active and retired chief legal officers of some of America's most respected corporations, distinguished scientists and academicians and members of national and international law firms.

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, application of equal protection under the law by 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.



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